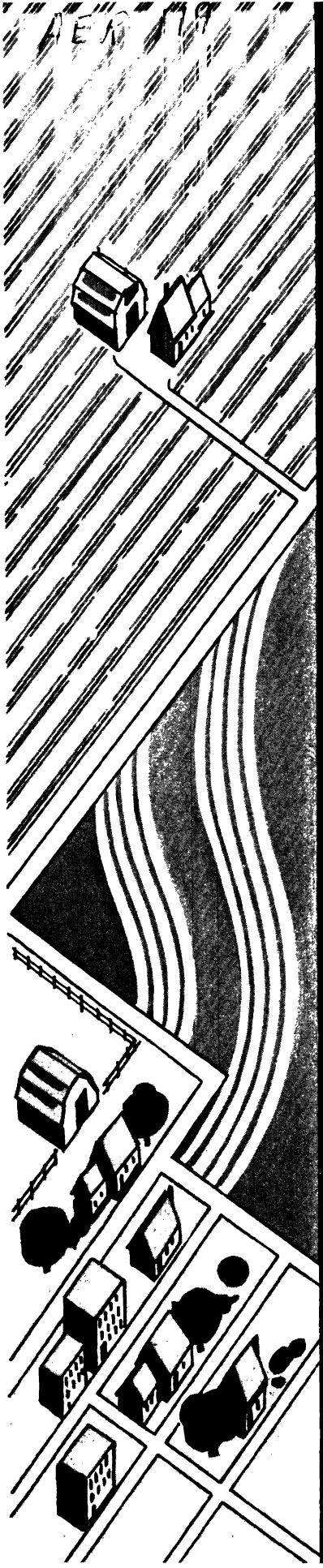

TAXATION OF FARMLAND ON THE RURAL-URBAN FRINGE

A SUMMARY OF STATE PREFERENTIAL ASSESSMENT ACTIVITY

AGRICULTURAL ECONOMIC REPORT NO. 119
ECONOMIC RESEARCH SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Washington, D. C. September 1967

CONTENTS

TAXATION OF FARMLAND ON THE RURAL-URBAN FRINGE

A Summary of State Preferential Assessment Activity

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INTRODUCTION

In 1950, 13.8 percent of the U.S. population lived in urban fringe areas, as defined by the U.S. Census.1/ By 1960, this proportion had grown to 21.1 percent. It is reasonable to assume that this growth has continued unchecked since that time. Numerous problems affecting both fringe-area residents and State and local governments have accompanied this rapid increase in population. This report is about attempts by the States to meet one of these problems: the rapid increase in tax levies on farm land adjacent to metropolitan areas.

The property tax is the main source of support for local government in the United States. In fiscal year 1964-65, local governments collected more than $22 billion in property taxes, amounting to 87 percent of their tax revenue and 41 percent of their total revenue.2/ The local expenditures which these revenues have helped to finance have been growing rapidly. In fiscal year 1964-65, local government expenditures were $55,890 million,3/ up from $23,814 million in calendar year 1954.4/ In part, this increase was attributable to increases in the prices local governments must pay for goods and services.5/ In part, the expenditure rise reflected population increases; and in part, it resulted from a substantial increase in the quality and range of services demanded from local governments by the citizens they serve.

These figures are, of course, aggregates. An individual unit of government in the path of urban expansion would doubtless present a more dramatic picture. As population expands into a new area, expenditures can be expected

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1/ U.S. Bureau of the Census. Statistical Abstract of the United States: 1965. U.S. Govt. Print. Off., Washington, D.C., 1965, p. 24.

2/ U.S. Bureau of the Census. Governmental Finances in 1964-65. Series GF-No. 6, U.S. Govt. Print. Off., Washington, D.C., 1966, p. 20:

3/ Govt. Finances in 1964-65, p. 21.

4/ Summary of Governmental Finances in 1954. G-GF54, U.S. Bureau of the Census, Washington, D.C., 1955, p. 25.

5/ The implicit price deflator for State and local government purchases of goods and services--a price index--rose from 85.3 in 1954 to 119.3 in 1964. Economic Report of the President, 1966; U.S. Govt. Print. Off., Washington, D.C., 1966, p. 215.

to increase sharply. New schools must be built for a rapidly growing enrollment, and additional teachers must be hired to staff them; miles of streets must be paved, maintained, and patrolled by a larger police force; more buildings must be protected against fire; and increased density makes building inspection more urgent.

Simultaneously, land values increase rapidly--and the farmer is, by the nature of his business, a major landholder. He is likely to feel that he is caught in a squeeze: Land values, on which his taxes are based, are rising, and the revenue needs of his local governments are rising, too. USDA estimates indicate that taxes per acre levied on farms in Standard Metropolitan Statistical Areas (SMSA's) average more than 2 1/2 times the taxes on farms in counties adjacent to SMSA's, and more than five times those in the more rural counties located some distance from metropolitan centers. It is estimated that about one-fourth of the total farm real estate levies in 1963 originated in these metropolitan areas.6/

This rapid increase in taxes and the resultant pleas for relief have brought about the passage of new legislation in several States. Two previous USDA reports have described these new laws.7/ A major purpose of this report is to bring these discussions up to date, and to provide some observations on the potential place of these laws in State revenue systems.

TYPES OF STATE LEGISLATIVE ACTION

The individual State summaries included in this report show that State legislatures have met these rural-urban fringe problems in a variety of ways. The majority of these approaches fall into four broad categories: plain preferential assessment, tax deferral, planning and zoning, and easement.

Plain Preferential Assessment

The legislatures of Connecticut and Maryland have passed laws which are good examples of the plain preferential assessment approach. These laws provide that land which is actively devoted to farming shall be assessed on the basis of its value for agriculture, and that other potential uses, such as housing subdivisions, shall be ignored. In theory, a tract of farmland on the fringe of a large city would have the same value for tax purposes as an identical tract located far from urban influences. All farmers in the State, therefore, should find that their property taxes have about the same relationship to the earning capacity of their farms, and that any obstacle that the property tax may have presented to continued farming on the urban fringe has been removed.

6/ Farm Real Estate Taxes, Recent Trends and Developments. U.S. Dept. Agr., Econ. Res. Serv., RET-4, Washington, D. C., October 1964.

7/ House, Peter; State Action Relating to Taxation of Farmland on the Rural-Urban Fringe; U.S. Dept. Agr., Econ. Res. Serv., ERS-13, August 1961. Stocker, F. D.; Selected Legislative and Other Documents on the Preferential Assessment of Farmland, U.S. Dept. Agr., Econ. Res. Serv., March 1963.

Opponents of this approach commonly raise several objections. They charge that landowners are being given a substantial tax advantage and that little is asked of them in return. The only requirement is that the landowners must have the land in agricultural use, and, perhaps, have had it in this use for the previous 2 or 3 years. In addition, opponents argue that nonfarmer speculators succeed in getting their land classified as farmland by conducting very minimal farming operations on it, and that the laws benefit these speculators more than they do the bona fide farmers; that is, the laws simply subsidize individuals who are holding land for eventual urban uses, rather than serving to preserve agriculture.

Tax Deferral

The deferred tax approach represents one attempt to meet these objections. Under these laws, part of the property tax is deferred each year, rather than forgiven. This deferred tax becomes due when the land passes into nonagricultural uses. The local assessor is required to place two values on each piece of farm property: (1) The value in agriculture, which is used for current taxation purposes; and (2) the value which would have been used in the absence of provisions for preferential assessment. When the land use changes, taxing officials determine the amount of tax due for each year for which the tax has been deferred. This is computed by multiplying the difference in the assessments for each year by the tax rate used in that year. The deferred tax then becomes due. The number of years for which the deferred tax is due depends on the State law. New Jersey, which calls it a "roll-back" tax, uses 3 years; Oregon uses 5 years. A proposed constitutional amendment in California (defeated by the voters) would have used 7 years. Oregon charges interest at 6 percent on the deferred taxes; New Jersey charges no interest.

Proponents of the deferred tax law argue that landowners holding land for early conversion to urban use would have little incentive to apply for the use-value assessment. For example, when there is a provision for deferring taxes for 5 years, a landowner must hold the land for at least 6 years before he can benefit from the law. An additional advantage claimed for the law is that it produces extra revenue at exactly the time more funds are needed to provide schools, sewers, and other facilities for a larger population.

Planning and Zoning

A third group holds that plain preferential assessment and tax deferral laws are both inadequate solutions, because they ignore the community's plans for eventual growth. Advocates of this approach would tie the availability of use-value assessment to local land-use zoning. They argue that our cities will continue to grow and that we must plan to channel and control that growth. In their opinion, use-value assessments alone are inadequate because they do not take account of the community's plans: they must be granted whenever the land use meets established criteria for a farm and the owner chooses to apply for the special assessment procedure.

Under the planning and zoning approach, farmland can receive preferential assessment only in areas which have been designated as agricultural or open

space zones. Farmland in other zones is assessed exactly like all other property. This tends to encourage the transfer of farmland to other uses; lower taxes in agricultural zones tend to facilitate the preservation of farmland in agriculture. This approach has been used in Hawaii, and to some degree in Florida, California, and one or two other States.

If zoning laws are truly strong and well enforced, this approach amounts to nothing more than an application of the ad valorem principle--the principle that property should be taxed according to its value. If only agricultural use is permitted by law, and there is no reasonable probability that the law will be changed, then only returns from agriculture are relevant in determining value. Of course, this implies a degree of rigidity in zoning which is rare, and it may imply a greater degree of public control over private land use than the American people want.

Easement

A fourth approach abandons the use of lower assessments as a mechanism for affecting land use. Instead, the State or the local government unit contracts with the landowner to restrict development of his land for a period of time (or, in some cases, obtains a perpetual easement), and pays him for this restriction. A number of States--and the Federal Government--have used easements to preserve scenery in recent years. Since these laws do not, properly speaking, operate through the taxing process, no attempt has been made in this report to cover them fully.

Contracts restricting development may affect the value of the land in much the same manner as zoning restrictions. California, for example, recognizes this effect in its laws by providing that if land use is restricted by contract, "the assessor shall consider no factors other than the uses permitted under such restriction when there is no reasonable probability of the removal or modification of the restrictions within the near future."

REQUIREMENTS FOR OBTAINING PREFERENTIAL ASSESSMENT

Whatever the type of preferential assessment may be, the basic requirement which the landowner must meet to obtain the use-value, or preferential, assessment is to have his land in agricultural use. A few States include forest land. Agricultural use is commonly defined in the law, but determining whether a particular piece of property is a farm is still difficult. In a number of States, the State department of taxation has issued regulations to give local assessors further guidance. The Maryland regulation, for example, specifies that the assessor shall consider the following factors:8/

1. Zoning applicable to the land.

2. Application for, and grants of, zoning reclassification in the area.

3. General character of the neighborhood.

8/ Maryland Department of Assessment and Taxation, Regulation 9.

4. Use of adjacent properties.

5. Proximity of subject property to metropolitan area and services.

6. Submission of subdivision plan for subject or adjacent property.

7. Present and past use of the land.

8. Business activity of owner on and off the subject property.

9. Principal domicile of owner and family.

10. Date of acquisition.

11. Purchase price.

12. Whether farming operation is conducted by the owner or by another for owner.

13. If conducted by another for owner, the provisions of the arrangement, written or oral, including, but not limited to, the term, area let, consideration and provisions for termination.

14. Farming experience of owner or person conducting farming operation for owner.

15. Participation in governmental or private agricultural programs or activities.

16. Productivity of the land.

17. Acreage of cropland.

18. Acreage of other lands (wooded, idle).

19. Number of livestock or poultry (by type).

20. Acreage of each crop planted.

21. Amount of fertilizer and lime used.

22. Amount of last harvest of each crop.

23. Gross sales last year from crops, livestock and livestock products.

24. Amount of feed purchased last year

25. Months of hired labor.

26. Uses, other than farming operations, of the land.

27. Ratio of farm or agricultural use as against other uses of land.

28. Inventory of buildings, and condition of same.

29. Inventory of machinery and equipment, and condition of same.

As this regulation illustrates, the problem of defining agricultural use is not easy to solve. This is particularly true if the purpose is to distinguish the "bona fide farmer" from the "speculator." Any individual who owns land on the fringe of a large city must, if he is at all competent as a manager, recognize that the price at which he can sell that land is likely to rise over the coming years. Under these circumstances, it is not easy to define the difference between a bona fide farmer and a speculator, let alone to give the local assessor instructions on how to make this judgment in practice. Presumbably, the distinction turns, in part at least, on the difference between the individual who is holding the land principally for future price rises and the individual who is holding it principally for current returns from farming. The fact that this distinction turns on a taxpayer's intentions complicates the assessor's problem.

CONSTITUTIONAL PROBLEMS

Many State constitutions include a provision requiring that taxes be levied at uniform rates. Frequently, to institute a preferential assessment provision, States have found it necessary to amend their constitutions. For example, the Maryland Court of Appeals in 1960, and the New Jersey Supreme Court in 1962, both struck down as unconstitutional the preferential assessment laws in those States. Both States have since amended their constitutions and reenacted preferential assessment.

PLACE OF PREFERENTIAL ASSESSMENT LAWS IN STATE PROGRAMS TO INFLUENCE LAND USE

Questions about the actual effects of use-value assessment laws in preserving agriculture on the rural-urban fringe remain, in large measure, unanswered. The land market on the rural-urban fringe is very complicated; many forces affect land values and land use, and these factors can change quickly. As a result, it is difficult to design research to determine the effect of any single variable, such as taxes, on land use. It seems likely that with an offer of, say $2,500 an acre for a farm, a reduction in the property tax bill is not likely to be a large incentive. On the other hand, reduction of the tax bill might remove an obstacle for the farmer who wishes to continue to farm for another few years until he can retire, or for an individual who wants to leave his land in agricultural use for any of a variety of other reasons. In short, use-value assessment is not a panacea for the problems of the rural-urban fringe. It may, however, be worth considering as one useful tool.

Decisions to enact or not to enact a preferential assessment bill depend on a number of fundamental questions. One of these is the type of urban development that the community desires. For example, does the community want to leave development on the urban fringe relatively untouched by governmental action? Does it want to try to channel development into radial corridors reaching out along major transportation arteries from the city, with wedges of open space in between the corridors? Does it, perhaps, want to promote the growth of satellite cities? Wrapped up in this question of urban development is the whole problem of open space--potential uses of open space for the urban dweller, and the role which farming can play in providing open space. A well-kept farm, for example, is commonly regarded as pretty, and city children can learn something about farming by observation as they drive by. On the other hand, a farm will not provide space for picnicking, hiking, camping, and other recreational activities. If these are the reasons society feels a need for open space, society will have to find another vehicle for providing this space.

Other questions, as well, bear on this decision. One of these is the extent to which the community feels it should go in attempting to ameliorate the problems of the individual who would otherwise be forced to uproot himself from the area where he has lived and farmed all his life, and begin anew in a different area. Problems of equity in taxation are involved, too. For example, the typical farmer owns more real estate than the typical wage earner with an equal income. Hence, many people argue that the farmer pays more, in comparison with the wage and salary worker, than either his income or the services he receives from local government would justify. On the other hand, some would argue that property ownership, in itself, increases ability to pay. There is no "scientifically correct" answer to questions such as these. Each individual must make up his own mind on the basis of what he feels is fair.

Once the citizens of a State have thought through questions such as these, they, and their elected representatives, can begin to consider whether some form of preferential assessment of farmland might help to meet their goals, or whether other tools appear more promising.

Summaries of preferential assessment laws enacted or considered by various State legislatures appear on the following pages. These have been compiled as an aid to persons studying preferential assessment as a possible approach to the taxation of farmland lying in the path of urban expansion.

SUMMARIES OF STATE ACTION: LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL

References

In general, laws are cited in the following pages by their section or paragraph number; no further reference is given. These can be found in the codified statutes for the particular State. On occasion, however, it has been desirable to cite the session laws of the State; these are footnoted. Bills which did not become law are cited by number and year.

California

The first preferential assessment measure approved by the State of California was enacted in 1957. This measure added provisions to the Revenue and Taxation Code which limited the factors which may be considered in assessing land zoned and used for agriculture or recreational purposes exclusively. The section added read as follows:

> 402.5 In assessing property which is zoned and used exclusively for agricultural or recreational purposes and as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future, the assessor shall consider no factors other than those relative to such use.

When asked to rule on the provisions of this measure, the State Attorney General stated: "Section 402.5 is a restatement of an established valuation standard and makes no change in pre-existing law." He reasoned:

> It would seem evident that the "highest and best use" of property zoned exclusively for agricultural or recreational purposes "as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future" could only be agricultural use or recreational use.

> Section 402.5, accordingly, merely restates an accepted standard of valuation properly applicable even in the absence of statute, and we do not reach the question as to whether a statute which purports to establish a restricted standard for limited types of real property is constitutionally defective.
>
> We believe that the assessor is required to exercise his judgment in the application of section 402.5 as he must in many other instances on assessing for ad valorem tax purposes. Thus, for example, if property zoned for agricultural or recreational purposes is surrounded by property which had been zoned similarly but which is now zoned for residential or commercial purposes, it would seem that the assessor properly could conclude that there was a reasonable probability that the zoning restriction would be removed or modified.9/

In 1959, there were several attempts to revise and expand the preferential assessment law. Two of these attempts were successful. Section 402.5 was amended to include airports as well as agricultural land.10/ A constitutional amendment allowing preferential assessment of golf courses was also approved and sent before the voters.11/ This amendment was approved by a 3 to 2 margin. The amendment read as follows:

> Sec. 2.6 In assessing real property consisting of one parcel of 10 acres or more and used exclusively for nonprofit golf course purposes for at least two successive years prior to the assessment, the assessor shall consider no factors other than those relative to such use. He may, however, take into consideration the existence of any mines, minerals, and quarries in the property, including, but not limited to oil, gas, and other hydrocarbon substances.

The 1959 General Assembly received three other items of legislation related to preferential assessment.12/ Each of these measures contained the same amendment to be added to the laws of the State. Two of these bills provided for a constitutional amendment; the other proposed to amend the property tax laws directly. None of these measures was approved. The proposed amendment follows:

> Sec. 2.5 In assessing property zoned and used exclusively for agricultural purposes, the assessor shall consider no factors other than those relative to an agricultural use.

9/ Section 402.5 was repealed in 1966; the 1966 changes are discussed more fully on page 18.

10/ Chapter 915, Stats. 1959.

11/ Constitution of the State of California, Art. 13, para. 2.6.

12/ A.C.A. No. 24., 1959, S.C.A. No. 2., 1959. A.B. No. 1860, 1959.

California

The 1961 Session of the California Legislature approved a constitutional amendment which would have altered the constitutional basis for the assessment of farmland. 13/ This proposed amendment was rejected by a vote of 2,384,064 against; 2,147,761 for. This section which was to be added to the State constitution read as follows:

> Sec. 2.8 In assessing land which is used exclusively for agricultural purposes, and which has been so used for at least two successive assessment years immediately preceding the lien date, the assessor shall consider no factors other than those relative to agricultural use if the fee simple owner of the land makes application in writing to the assessor, by the time and in the manner provided by the Legislature, for the assessment of the land to be made on the basis of agricultural use. Upon the assessor's determination that the land meets the qualifications of this section, it shall be assessed as herein provided until such time as the fee simple owner or his successor in interest applies for assessment as otherwise provided by this Constitution, or until the land is diverted to a use other than for exclusively agricultural purposes.
>
> In the event that land assessed pursuant to this section is diverted to a use other than for exclusively agricultural purposes, or application is made for its assessment as otherwise provided by this Constitution, the land shall be subject to additional taxes in an amount equal to the difference, with such interest as may be provided by law, between the taxes paid or payable on the basis of the assessments made hereunder and the taxes that would have been paid or payable had the land been assessed as otherwise provided by this Constitution on the seven immediately preceding lien dates. The land assessed pursuant to this section shall be subject to a lien for such additional taxes and interest.
>
> * * * * *
>
> This section shall not be operative in any county or city unless the governing body of the county or city provides by ordinance that it shall be operative in respect to taxes levied for county or city purposes. Such an ordinance shall not be operative as to any tax year unless it is adopted at least 30 days prior to the lien date for that year. Any ordinance adopted pursuant to this section shall be subject to initiative or referendum by the electors of the county or the city which adopts the ordinance in the manner and to the extent provided for in Section 1 or Article IV of the Constitution.

13/ A.C.A. No. 4., 1961.

A bill to implement the proposed constitutional amendment after its passage died in committee when the public rejected the amendment.14/

Several measures dealing with the assessment of farmland in California were introduced in the 1965 legislative session. Two of these measures failed to pass. Senate Bill 1148 would have added a section to the California Code to establish procedures for owners of agricultural land to contract with local governments to use their lands for agricultural purposes for up to 12 years, and to provide that assessors should consider such contracts in valuing property. A "tax deferral" provision was included.

The second bill which was introduced but not approved provided for a constitutional amendment which would have established assessment on the basis of "capitalized value of the income from agricultural use of the land under average management." The assessor was also to take into consideration the existence of any mines, minerals, and quarries in the land including. . .oil, gas, and other hydrocarbon substances. A 7-year "roll-back" was provided under some circumstances.15/

Two measures intended to assist in the preservation of agricultural land within the State were approved in 1965. The first of these, the California Land Conservation Act of 1965, provides for binding contracts between the landowner and the local government, before land will be assessed on the basis of its value in agriculture. The law provides for two types of documents: a "contract" and an "agreement." Both types are to be used for land within areas previously designated by the local government as agricultural preserves. The contract, however, can be used only for land which meets the additional requirement of being "prime agricultural land," a term which is defined in the law. The contract is for a term of 10 years, and is automatically renewed each year (so that it always has 10 years to run) unless either party gives notice that it does not choose to renew. The terms of an agreement are to be negotiated, but the authors understand that in practice the agreements have tended to follow the 10-year, automatically renewable, pattern of the contracts.

Contracts differ from agreements in one other important respect: contracts provide for compensation. The State pays each city or county $1 per acre each year for land under contract, and the local government must make a payment to the landowner if the assessment on the land is raised above what it was when the contract was first signed.

The most significant portions of the California law follow:

Article 1. General Provisions

51201. As used in this chapter, unless otherwise apparent from the context:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes.

14/ A.B. 1849, 1961.
15/ S.C.A. No. 14, 1965.

(b) "Agricultural use" means use of land for the purpose of producing an agricultural commodity for commercial purposes.

(c) "Prime agricultural land" means (1) all land which qualifies for rating as class I or as class II in the Soil Conservation Service Land Use capability classifications, or (2) land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to agricultural and compatible uses as designated by a city or county, and established in the same manner as a general plan referred to in Section 65460 of the Government Code. Such preserves, when established, shall be for the purpose of subsequently placing restrictions upon the use of land within them, or supplementing existing restrictions, pursuant to the purposes of this chapter. Such preserve may contain land other than prime agricultural land, but the use of any land not under contract within the preserve shall subsequently be restricted in such a way as to not be incompatible with the agricultural use of the prime agricultural land the use of which is limited by contract in accordance with this chapter. Such preserve may also be established even if it contains no prime agricultural land, provided that the land within the preserve is subsequently restricted to agricultural and compatible uses by agreement as provided in Section 51255, or by any other suitable means.

(e) Except as otherwise defined by this act, "compatible use" shall be determined by the city or county administering the agricultural preserve according to uniform rules. "Compatible use" shall include the erection, construction, alteration or maintenance of gas, electric, water, or communication utility facilities, unless the governing board makes a finding after notice and hearing that any or all such facilities are not a compatible use. No land occupied by gas, electric, water, or communication utility facilities shall be excluded from a preserve by reason of such use.

* * * * *

Article 3. Contracts

51240. Any city or county may by contract, and through the expenditure of public funds, limit the use of prime agricultural land for the purposes of preserving such land pursuant and subject to the conditions set forth in the contract and in this chapter.

51241. If such a contract is made with any landowner, the city or county shall offer such a contract under similar terms to every other owner of prime agricultural land within the agricultural preserve in question.

51242. No city or county may contract with respect to any land pursuant to this chapter unless the land:

(a) Is devoted to agricultural use.

(b) Is located within an area designated by a city or county as an agricultural preserve containing not less than 100 acres.

(c) Is classified as prime agricultural land.

51243. Every such contract shall:

(a) Provide for the exclusion of uses other than agricultural, and other than those related to or compatible with agricultural use, for the duration of the contract.

(b) Be transferred from the contracting city or county to any succeeding city or county acquiring jurisdiction over the land under contract, and from the contracting owner to any succeeding owner. On the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties, and powers of the county under such contract.

51244. The term of each contract shall be 10 years. The contract shall be automatically renewed at the end of each year for an additional 10-year period, unless notice of non-renewal is given as provided in Section 51245.

Notice of renewal and the new termination date shall be recorded with the county recorder and from and after the time of such recording shall constitute such notice to all persons as is afforded by the recording laws of this state.

51245. If either the landowner or the city or county desires in any year not to renew the contract that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of the contract. Unless such written notice is served by the landowner at least 90 days prior to the renewal date or by the city or county at least 60 days prior to the renewal date, the contract shall be considered renewed for 10 years as provided in Section 51244.

51246. If the landowner serves notice of his intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

* * * * *

51250. Whenever a city or county enters into a contract with a landowner pursuant to this chapter, it shall record with the county recorder and file with the Director of Agriculture a copy of the contract, which shall describe the land subject thereto, together with a reference to the map showing the location of the agricultural preserve in which the property lies, and the latter must approve such contract before it becomes effective and operative, but from and after the time of such recordation such contract shall impart such notice thereof to all persons as is afforded by the recording laws of this state.

* * * * *

Article 3.5 Agreement

51255. Notwithstanding Section 51242, any city or county may, by agreement, but without payment to the landowner of public funds, limit the use of any land within an agricultural preserve to agricultural or compatible uses. The city or county, upon entering into any such agreement, shall file a copy of the agreement with the Director of Agriculture and shall record the original or a copy thereof, which shall describe the land subject thereto, with the county recorder. From and after the time of such recordation such agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state.

51256. Any city or county which offers any such agreement to any owner of land in agricultural use within a preserve shall offer agreements on similar terms to any other such owner within the preserve upon his request. Each agreement as to land within a preserve may be made mutually dependent upon any other agreement as to land within that preserve. The length, terms, conditions, and restrictions of such agreements shall be determined by

negotiation between the city or county and the landowner. It shall be the policy of the city or county to secure agreements under which there is no reasonable probability of the removal or modification of the limitation or restriction within the near future. However, the provisions of this section shall not be construed to require that all agreements entered into upon lands within a preserve be identical, so long as such differences as exist are related to differences in the location and circumstances of the owners of land in agricultural or compatible uses, or pursuant to uniform rules adopted by the city or county.

* * * * *

Article 4. Compensation

51260. The state shall, through the Department of Agriculture, make an annual payment to each city or county which has land under contract pursuant to this chapter as of July 1, of each year, in an amount equal to one dollar ($1) for each acre of land under such a contract. Such payments may be used by the city or county for its costs of administration in carrying out the purposes of this chapter and to make or assist in making any additional payments to the owners of parcels of land under contract.

For the purposes of this article, the city or county shall annually submit to the Director of Agriculture a map showing each agricultural preserve in the city or county and a description of each parcel of land in the preserve that is under contract, the date of each contract, and the amount of payments which will be due under each contract pursuant to this article for the ensuing year.16/

51261. Payments to any landowner by a city or county pursuant to a contract entered into under this chapter shall be an annual payment of five cents ($0.05) for each one dollar ($1) of the assessed value of the land under contract.

The landowner, however, may waive the obligation of a city or county to make any such payments. Such waiver shall be expressed in the original contract or any subsequent renewals thereof, and shall be in effect for the original or renewal term of the contract. A county or city may require such a waiver by a landowner up to the amount of the assessed valuation of the property at the time of initially entering into the contract, as a condition on entering into the contract. All waivers so required must be pursuant to a uniform rule applicable to all contracts.

16/ A.B. 2117, 1965.

51262. The payment scale for the remaining period of an unrenewed contract shall be that percentage of the amount that the landowner would otherwise have been entitled to pursuant to Section 51261 if the contract had been renewed, as shown by the following:

Year	If owner does not renew	If city or county does not renew
1	100%	100%
2	90%	100%
3	80%	100%
4	70%	100%
5	60%	100%
6	50%	100%
7	40%	80%
8	30%	60%
9	20%	40%
10	10%	20%

51263. If the land under contract should, during the term of the contract, no longer qualify as prime agricultural land, or not be devoted to an agricultural use, payments under the contract to the landowner shall be suspended and shall not be resumed until the land again should so qualify and be so devoted during the term of the contract.

* * * * *

Article 5. Cancellation

51280. It is hereby declared that the purpose of this article is to provide relief from the provisions of contracts entered into pursuant to this chapter only when the continued dedication of land under such contracts to agricultural use is neither necessary nor desirable for the purposes of this chapter.

51281. A contract may be canceled on the mutual agreement of all parties to the contract, and the state, as provided in this article.

51282. The cancellation of any contract shall not be effective until approved by the Director of Agriculture, upon the recommendation of the State Board of Agriculture. The director shall act only on the request of the parties to the contract as represented by the receipt of the acknowledged cancellation agreement of the landowner and a resolution of the governing body of the city or county.

The State Board of Agriculture may recommend and the Director of Agriculture may approve the cancellation of a contract only if they find:

(a) The cancellation is not inconsistent with the purposes of this chapter.

(b) The cancellation is in the public interest. The existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of a contract. A potential alternative use of the land may be considered only if there is no proximate, noncontracted land suitable for the use to which it is proposed the contracted land be put.

The uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

51283.

(a) Upon the cancellation of any contract, and as soon thereafter as the land to which it relates is reassessed by the assessor, the landowner shall pay to the city or county an amount equal to 50 percent of the new assessed valuation of the property.

(b) If the State Board of Agriculture recommends that it is in the public interest to do so, and the Director of Agriculture so finds, the director may waive any such payment or any portion thereof, or may make such payment or a portion thereof contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, provided:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner; and

(2) The city or county has recommended to the State Board of Agriculture that no such payment be required, or that the deferment of such payment or portion thereof be allowed, and the board has determined it is in the best interest of the program to conserve agricultural land use that such payment be either deferred or not required.

> 51284. No contract may be canceled until after the city or county has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to each and every owner of property under contract within the agricultural preserve in which the contracted property is located and shall be published pursuant to Section 6061 of the Government Code.
>
> 51285. No contract may be canceled if at the hearing, or prior thereto, the owners of 51 percent of the contracted acreage in the agricultural preserve protest such cancellation to the city or county conducting the hearing.
>
> 51286. Notice of cancellation of any contract, executed by the city or county and the Director of Agriculture, shall be recorded with the county recorder. It shall thereafter be conclusively presumed in favor of any bona fide purchaser or encumbrancer that there has been compliance with all the provisions of this article to cancel such contract.

Approved in conjunction with the Land Conservation Act was a measure which instructed the assessor to take account of the contracts:

> 402.6 In assessing property which is located within an agricultural preserve where the use is restricted by a contract, agreement or other means pursuant to Chapter 7 (commencing with Section 51200) of part 1 of division 1 of Title 5 of the government code, the assessor shall consider no factors other than the use permitted under such restrictions when there is no reasonable probability of the removal or modification of the restrictions within the near future.17/

In 1966, as part of a major amendment of the property tax laws, California repealed sections 402.5 and 402.6. A new section was added to instruct the assessor on how to consider the effect upon value of restrictions on the use of the land:

> 402.1 In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Restrictions shall include but are not necessarily limited to zoning restrictions limiting the use of land and any recorded contractual provisions limiting the use of lands entered into with a governmental agency pursuant to state laws or applicable local ordinances. There shall be a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

17/ A.B. 3128, 1965.

Grounds for rebutting the presumption may include but are not necessarily limited to the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

In assessing land where the presumption is unrebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal affect upon value.

In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable land not under restriction but upon which natural limitations have substantially the same effect as restrictions.

It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of such land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and section 1630 of the Revenue and Taxation Code is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land which legally are not available to the owner and not contemplated by local government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at less than the use of representative comparable sales information on land under similar restrictions when such information is available.

In addition, provision was made for the landowner to obtain a statement from the local governing body of its intentions not to remove the restriction:

1630.

(a) Any real property owner the use of whose land is subject to an enforceable restriction placed upon it by a local agency may apply to the governing body of the local agency for a written statement declaring the present intention of the governing body to refrain from removing or modifying any such restriction in the predictable future.

(b) The written statement of intention may be granted or denied by the governing body at its discretion. A reasonable fee not to exceed ten dollars ($10) may be charged for each such statement.

(c) The written statement may be presented to the county board of equalization as evidence that a restriction on the use of the taxpayer's land exists and that such restriction should be considered in assessing the value of the land.

(d) The written statement shall constitute a rebuttable presumption that the governing body does not intend to remove or modify the restriction in the predictable future.

In November 1966, the California voters approved an amendment to the State constitution to permit the legislature to modify assessment practices for open space lands:

Article XXVIII, Open Space Conservation

Section 1. The people hereby declare that it is in the best interest of the State to maintain, preserve, conserve, and otherwise continue in existence open space land for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the State and its citizens. The people further declare that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of this article to so provide.

Section 2. Notwithstanding any other provision of this constitution, the Legislature may by law define open space lands and provide that when such lands are subject to enforceable restriction, as specified by the Legislature, to the use thereof solely for recreation, for the enjoyment of scenic beauty, for the use of natural resources, or for production

of food and fiber, such lands shall be valued for assessment purposes on such basis as the Legislature shall determine to be consistent with such restriction and use. All assessors shall assess such open space lands on the basis only of such restriction and use, and in the assessment thereof shall consider no factors other than those specified by the Legislature under the authorization of this section.18/

Connecticut

There have been several attempts to enact laws to reduce the taxes on farmland in Connecticut. In 1957, a bill was approved by the State legislature which limited the assessment of farmland owned by a bona fide farmer to 25 percent of its fair market value. This act was vetoed on the ground that it would impair the credit rating of local governments.

The following is a portion of the Governor's veto message:

I return herewith, without my approval, Substitute for Senate Bill No. 11, Public Act No. 589. "An Act Concerning Taxation of Agricultural Property."

* * *

It would be foolhardy to tamper with the municipal credit rating of our towns at a time when such a great need exists for capital improvements and expenditures to take care of increasing local needs. This Bill would adversely affect every person in every town of our State, even those whom the measure was designed to help.

At present, and for many years, notices of sale of our municipal bonds have contained a provision to the effect that "these bonds will constitute general obligations of the town payable from ad valorem taxes levied against all taxable property without limitation as to rate or amount."

When the bonds are actually purchased, the town which issues them furnishes the buyer with an opinion from bond counsel stating that the bonds are payable from ad valorem taxes levied against all taxable property within the town without limitation as to rate or amount.

If Public Act No. 589 became law, bond counsel could no longer give this assurance, and the notice of sale as well as bond counsel's opinion would have to warn purchasers that taxation of agricultural property was severely restricted: that farm

18/ S.C.A. 4, First Ex. Sess., 1965.

> tools, equipment, and livestock owned by each "bona fide" farmer were exempt from taxation to the extent of $30,000.00, and that farm land could not be assessed at more than 25 percent of its fair market value. This would lead to such indefinite commitments, that uncertainty would endanger the possible sale.
>
> Under this Act, here is what would happen to Connecticut's municipalities:
>
> > Municipal bonds would no longer be legal list investments for savings banks in many areas; for example, in New York, which not only absorbs much of the Connecticut bond supply but from which many other states take financial guidance, Connecticut municipal bonds could not be held or purchased by savings banks.
> >
> > Faced with a shrinking market, our towns would have to pay even higher interest rates than the already high rates with which their present issues must be backed. Within the next few years, our towns will issue tens of millions of dollars in new obligations for needed improvements. This Bill would cost each town a minimum increase of $24,000.00 in interest payments for each million dollars' worth of these new bonds, and possibly many times that figure.19/

* * * * *

A bill introduced in the 1959 Session of the General Assembly would have limited the assessment of land used in agriculture to its fair value for agricultural purposes.20/ This bill was not enacted.

A bill introduced and approved in 1961 allowed the State to obtain easements in those areas where easements would conserve tracts of open land in their natural state. Section 3 of that bill provided: "For purposes of local taxation assessments made on property encumbered with a conservation easement shall reflect the fact that the use of such property is limited by the terms of such easement."21/

In 1963, after a long debate, a general preferential assessment bill was passed. This measure applied to farmland, forest land, and open space land. Although the measure originally called for the recapture of a portion of the deferred taxes, this section was deleted before the bill was passed. The sections of the bill as passed, which deal with agriculture, follow:

> SECTION 1. It is hereby declared (a) that it is in the public interest to encourage the preservation of farm land,

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19/ Letter from Gov. Abraham Ribicoff to Hon. Mildred P. Allen, Secy. of State.

20/ S.B. 672, 1959.

21/ H.B. 580, 1961.

forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state, (b) that it is in the public interest to prevent the forced conversion of farm land, forest land and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land, forest land and open space land, and (c) that the necessity in the public interest of the enactment of the provisions of this act is a matter of legislative determination.

* * * * *

SECTION 3. (a) An owner of land may apply for its classification as farm land on any assessment list of a municipality by filing a written application for such classification with the assessor of such municipality not earlier than thirty days before nor later than thirty days after the date of such assessment list. Such assessor shall determine whether such land is farm land and, if he determines that it is farm land, he shall classify and include it as such on such assessment list. In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived there from, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous. (b) An application for classification of land as farm land shall be made upon a form prescribed by the tax commissioner and shall set forth a description of the land, a general description of the use to which it is being put, and such other information as the assessor may require to aid him in determining whether such land qualifies for such classification. (c) Failure to file an application for classification of land as farm land within the time limit prescribed in subsection (a) and in the manner and form prescribed in subsection (b) shall be considered a waiver of the right to such classification on such assessment list. (d) Any person aggrieved by the denial of any application for the classification of farm land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of tax review.

* * * * *

Section 9 of this act provides:

> The present true and actual value of any land classified as farm land pursuant to Section 3 of this Act, as forest land pursuant to Section 4, or as open space land pursuant to Section 5, shall be based upon its current use without regard to neighborhood land use of a more intensive nature, provided in no event shall the present true and actual value of open space land be less than it would be if such open space land comprised a part of a tract or tracts of land classified as farm land pursuant to Section 3 hereof.22/

Florida

The 1957 Session of the Florida Legislature approved a bill which added the following section to the Florida Statutes:

> 193.11 Assessment of Real and Personal Property; Assessors to visit Precincts.
>
> (3) All lands being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of said lands are embraced in a plat of a subdivision, or other real estate development. Provided, "agricultural purposes" shall include only lands being used in a bona fide farming, pasture, or grove operation by the lessee or owner, or some person in their employ. Provided shed nurseries; or nurseries under cover, shall not be termed agricultural and shall be excluded from this act. Lands which have not been used for agricultural purposes prior to the effective date of this act shall be prima facie subject to assessment on the same basis as assessed for the previous year, and any demand for a reassessment of such lands for agricultural purposes shall be subject to the severest scrutiny of the county tax assessor to the end that the lands shall be classified properly.

This act was followed in 1959 by the enactment of the Florida Greenbelt law. This law became effective without the governor's approval.

> AN ACT relating to taxation; permitting Boards of County Commissioners to zone agricultural lands used exclusively for agricultural purposes and establishing procedure therefore; providing for the assessment of such lands; and providing an effective date.

22/ Public Act 490, 1963.

WHEREAS, the climate of Florida has made the agricultural business the number one money producing business in our state, and

WHEREAS, much of the recent real estate development has tended to increase assessments on farm and agricultural lands and other agricultural lands and other agricultural products to unreasonable and unprofitable proportions, thus forcing many persons to give up their livelihood because of being taxed out of existence, and

WHEREAS, for the protection of the general welfare of the citizens of our state and our economy and to perpetuate, and continue, and encourage agricultural pursuits, NOW, THEREFORE,

Be it Enacted by the Legislature of the State of Florida:

SECTION 1

(1) The board of county commissioners of any county in the state is hereby authorized and empowered in its discretion to zone areas in the county exclusively used for agricultural purposes as agricultural lands; provided said lands have been used exclusively for agricultural purposes for five (5) years prior to such zoning.

(2) In the event that the board of county commissioners zone said lands as provided in subsection (1) then the board shall notify the tax assessor on or before November 1 and the tax assessor shall immediately after the first day of January of the succeeding year and on the first day of January of each succeeding year prepare and certify to the board of county commissioners a list of lands in the county so zoned as agricultural lands.

(3) The board of county commissioners shall examine said list and classification of such lands submitted by the tax assessor and shall make such reclassification as shall be appropriate or justified, and as reclassified shall zone such lands in the county for tax purposes only as agricultural.

(4) For the purpose of this section, "agricultural lands" shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee and all forms of farm products and farm production.

(5) The county tax assessor in assessing such lands so zoned and exclusively used for agricultural purposes as described and listed shall consider no factors other than those relative to such use. The tax assessor in assessing

land within this class shall take into consideration the following use factors only: The cost of the property as agricultural land, the present replacement value of improvements thereon, quantity and size of the property, the condition of said property, the present cash value of said property as agricultural land, the location of said property, the character of the area or place in which said property is located, and such other agricultural factors as may from time to time become applicable.

(6) The board shall keep a record of such lands so zoned for tax purposes only and restricted for agricultural lands and shall remove such zoning restrictions whenever lands so zoned are used for any other purpose.23/

Under the Greenbelt law the initiative for granting preferential assessment is left to the individual counties. The authors understand the law has seen little use. In the only court test of the Greenbelt law of which the authors are aware, the appeal to the State Supreme Court was dismissed on a procedural point. Apparently, no final ruling has been made on its constitutionality.

Two bills were introduced in the 1961 Florida Legislature dealing with the subject of preferential assessment. One of these bills, House Bill 538, provided only for the repeal of the Greenbelt law. This bill died in committee. The second bill, House Bill 347, known as the "just value bill," passed the House, but died on the Senate Calendar when the session adjourned. This bill also would have repealed the Greenbelt law. In addition, this measure contained a series of factors to be considered in obtaining the fair and just value of the assessed property.

The 1963 Florida Legislature passed two measures dealing with preferential assessment. One act, Senate Bill 578, broadened the coverage of section 193.11 (3) to include forest land; the second measure, House Bill 555, added a section similar to that proposed in House Bill 347 in 1961:

193.021 Method of Assessment of Property.

The county assessor of taxes of the several counties shall assess all the real and personal property in said counties in such a manner as to secure a just valuation as required by Section 1, Article IX of the Constitution of Florida. In arriving at a just valuation, the county assessor of taxes of the several counties shall take into consideration the following factors: (1) the present cash value of the property; (2) the highest and best use to which the property can be put in the immediate future; and the present use of the property; (3) the location of said property; (4) the quantity or size of said property; (5) the cost of said property and the present replacement value of any improvements thereon; (6) the condition of said property; (7) the income from said property. . . .

23/ Laws of Florida, 1959, ch. 59-226.

In 1963, the constitutionality of the 1957 act, providing that farmland should be assessed as agricultural land and on an acreage basis only, was questioned before the Florida Supreme Court. In two decisions the court affirmed the constitutionality of the law.24/ In its decision the court stated:

> Careful examination of this statute reveals nothing but an effort on the part of the legislature to classify agricultural lands for tax purposes; it defines what constitutes agricultural lands, points out exceptions to them and gives taxing officers other leads to a correct assessment. We find nothing in the act inconsistent with the requirement of 193.11 Florida statutes, that all property be assessed at full cash value. Neither do we find anything in the Act that runs counter to the requirement of Section 1, Article IX, Florida Constitution, which requires the legislature to "provide for a uniform and equal rate of taxation...and prescribe such regulations as shall secure a just valuation of all property."

The court emphasized its point that full cash value did not necessarily include any future value attributed to the property by its location:

> The lower court also fell into error in holding that "full cash value" had reference to value for any and all potential uses. This interpretation ignored the legislative classification of agricultural lands for tax purposes on the basis of actual use which the legislature was authorized to make.

The court concluded by saying:

> As courts, we should never forget that in construing acts of the legislature, we are concerned only with the power of the legislature to enact the law. Our peculiar social and economic views have no place in such a consideration. We are required to look for a reason to uphold the act and to adopt any reasonable view that will do so.

In his dissent Chief Justice Drew stated:

> The critical terms of the act construed, F.S. Section 193.11 (3), F.S.A., are that "All lands being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis."...The district court found that this section provides only for the unit of assessment for such lands to be acres instead of lots or otherwise, and decided that petitioner's agricultural lands were properly assessed on the same standards applicable to all lands under the mandate

24/ Tyson v. Lanier, 156 So. 2d 833.

> of the earlier enactment in F.S. Section 193.11 (1), F.S.A. that "The county assessor of taxes shall assess all property at its full cash value." It is plain, however, that this construction attributes no operative effect whatever to the words "as agricultural lands", and that without that language the statute would have precisely the meaning given it by the district court. The decision is therefore one which strikes, in part, a legislative enactment, and is rendered squarely upon the ground of constitutional impact permitting appeal to this court and requiring disposition of those issues here.
>
> The fundamental controversy, in my opinion, is controlled by the same reasoning and authority upon which the majority opinion was predicated in the recent decision in Franks v. Davis, Fla. 1962, 145 So. 2d 228. The legislative power of classification in the execution of the constitutional mandates of just valuation of all property and provision for a "uniform and equal rate of taxation" Article IX, Section 1, Florida Constitution, even if it would permit classification of all property on the basis of actual rather than potential use in the determination of full cash value, cannot justify a statutory prescription by which that standard is made applicable only to certain real property for the sole purpose of according to it a privilege. "Just valuation," in short, means valuation in relation to other property, the right of classification existing to correct inequities and not to create them.

In 1965 two decisions were issued by the Florida Supreme Court on items relating to the preferential assessment of farmland in Florida. The first of these, Lanier v. Overstreet,25/ declared that the special assessment of agricultural land did not conflict with the constitutional requirement that land be assessed at just valuation for the purpose of taxation. In answer to the appellant's contention that the uniformity provision of the Florida Constitution prohibits use-value assessment the court issued the following statement:

> It is settled that the "uniformity" requirement of the constitutional provision is applicable to the rate of taxation only and not to legislative regulation to secure a "just valuation" of property...

The Court continued:

> ...there is nothing in the legislative regulations respecting just valuation of taxable property to authorize assessment of property in accordance with a potential use which might be made of the property at some future time. In this state, the ad valorem tax on real and personal property accrues as of January 1st of the tax year; and the county tax assessor is required to assess the taxable property in this county and

25/ 175 So 2d 521.

> make out his assessment roll as of the 1st day of January of each year...The character of a particular parcel--whether as improved or unimproved land, see Section 193.11 (4), Florida Statutes, FSA, or as homestead property see Section 1 -- is determined as of January 1st and continues throughout the tax year regardless of any change in its character during that year. And all of the legislative directives in this field appear to have been designed to make sure that in doubtful areas, the assessment will be made on the basis of the actual use to which the property is designed to be put during the particular tax year.

The court then discussed the legislative directives which indicated that the land should be assessed in accordance with its actual character during the tax year.

The court concluded with the following statement:

> It can thus be seen that no preferential treatment has been accorded the agriculturist who desires to retain his property as such as against the encroachment of an expanding urban community. If and when he puts his agricultural land on the market for sale for a "higher and better" use—or, at least, one more valuable than an agricultural use—the property would no doubt no longer qualify as one "being used" for the agricultural purposes named in the statute and thus not within the intendment thereof.

Chief Justice Drew asserted that the legislature intended that all land including agricultural land should be assessed under the provisions of 193.021. Part of his dissent follows:

> Surely it is most reasonable to assume that the clear intent of the Legislature was for tax assessors to read into the already existing statutes Section 193.021 in order that uniformity and equality of assessments might be reached in land valuation for tax purposes.
>
> It is my view that Chapter 193.021, Florida Statutes 1963, sets forth the factors that must be considered by each of the 67 constitutional tax assessors of this State in valuing real property for the purpose of taxation and that said section is all-inclusive and was meant by the Legislature to embrace within and absorb all former statutes--particularly 193.11--relating to the subject of assessment of real property for tax purposes. In no other way can the constitutional mandate for equality and uniformity be attained. To recognize the power of the Legislature to grant exemptions from taxation to certain classes--and that's what it amounts to--will be to destroy the ad valorem taxing system in this State and to place the burden of government on those who are not fortunate enough to be brought within a

> favored class. The Legislature has no power under our Constitution, to exempt any property from taxation. If this is to be changed, it should be done by amendment to the Constitution and not by edict of this Court.

The second case decided in 1965 was Markham v. Blount:26/

> The complaint alleged that conflict arises by virtue of the directives of Florida Statutes s 193.11 (3) and 193.021 and 193.11 (1). Section 193.11 (3) provides in part as follows:
>
> > [T]his subsection shall not be construed, interpreted, or applied so as to permit lands being used for agricultural purposes to be assessed other than as agricultural lands and upon an acreage basis.
>
> SECTION 193.021 creates a measure of valuation designated "just valuation" which replaces the former standard of true or full cash value, and provides seven criteria for determining just value which may be summarized as present cash value, highest and best future use and present use, location, quantity or size, cost, condition, and income.
>
> SECTION 193.11 (1) provides in part:
>
> The County assessor of taxes shall assess all property on the basis provided in ss 193.021. [Florida Statutes]
>
> The complaint alleged that if the plaintiff assessor used the factors provided in Section 193.021 for all lands in Broward County, as directed by Section 193.11 (1), he would be in conflict with Section 193.11 (3) which prohibits the assessment of agricultural lands other than as agricultural and upon acreage basis.

In its decision the court quoted at length from the circuit court's opinion. The opinion appeared to be based on the court's assertion that:

> In reading the factors of "just valuation" prescribed by Section 193.021 for agricultural property, the agricultural factor must be taken into account as the only factor in each instance, concerning agricultural land. For example, the factor described in Subsection 1 of 193.021 of "the present cash value of the property" as to agricultural property would be read and interpreted as if it stated "the present 'agricultural' cash value of the property" and so on through the remaining six criteria or factors of value described in said Section 193.021.... The Court finds, determines, and declares that it does not matter if the value of a specific piece of agricultural property would be higher if assessed

26/ 175 So 2d 526.

in accordance with the criteria provided in Section 193.021 only, but the Plaintiff must nevertheless assess agricultural lands at only their value for agricultural use, and must take no other factors into consideration.

Hawaii

The 1961 Session of the Hawaii Legislature enacted special provisions for assessment and taxation of agricultural lands in the rural-urban fringe, as part of a comprehensive land-use control program.27/

Be it Enacted by the Legislature of the State of Hawaii:

Section 1. Findings and declaration of purpose. Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdividions with expensive, yet reduced, public services; the shifting of prime agricultural lands into non-revenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would develope these uses.

* * * * *

Section 3. Classification and districting of lands. There shall be three major classes of uses to which all lands in the State shall be put: urban, agriculture and conservation. The commission shall group contiguous land areas suitable for one of these three major uses into a district and

27/ Act 187. SLH 1961.

designate it as an urban district, agricultural district or conservation district, as the case may be. The commission shall set standards for determining the boundaries of each class of district; provided, that in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; in establishment of the boundaries for agriculture districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in Act 234, SLH 1957, are hereby re-named 'conservation districts' and, upon the effective date of this chapter, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, SLH 1957, shall constitute the boundaries of the conservation districts, provided, that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

Zoning powers now granted to counties under section 138-42 shall govern the zoning within the districts, with the exception that areas may not be zoned for urban uses except in those districts that are designated as urban by the commission. Zoning powers within conservation districts shall be exercised by the department to which is assigned the responsibility of administering the provisions of Act 234, SLH 1957.

* * * * *

Sec. 15. Adjustments of assessing practices. Upon the adoption of district boundaries and regulations, certified copies of the use classification maps showing the district boundaries and the regulations shall be filed with the department of taxation. Thereafter the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.

SECTION 3. Chapter 128, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to be appropriately numbered and to read as follows:

"Sec. Dedicated lands. (a) A special dedicated land reserve is established to enable the owner of any parcel of land within an agricultural district and/or a conservation district to dedicate his land for a specific

ranching or other agricultural use and to have his land assessed at its value in such use.

(b) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land assessed at its value in this use, he shall so petition the director of taxation and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose.

Upon receipt of any such petition, the director of taxation shall request the land study bureau to make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding of the land study bureau shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit and present use of surrounding similar lands and other criteria as may be appropriate.

The director of taxation shall also request the director of planning and research to make a finding of fact as to whether the intended use is in conflict with the over-all development plan of the State.

If both findings are favorable to the owner, the director of taxation shall approve the petition and declare that the owner's land is dedicated land.

(c) The approval by the director of taxation of the petition to dedicate shall constitute a forefeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director of taxation upon five years notice at any time after the end of the fifth year. In case of a change in major land use classification by a State agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years notice, by mutual agreement of the owner and the director of taxation.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the special tax assessment privilege retroactive to the date of the petition, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a five per cent per annum penalty from the respective dates that these payments would have been due.

Failure to observe the restrictions on the use means failure for a period of over one calendar year to use the land in that manner requested in the petition or the overt act of changing the use for any period. Nothing in this paragraph shall preclude the State from pursuing any other remedy to enforce the covenant on the use of the land.

(e) The director of taxation shall prescribe the form of the petition. The petition shall be filed with the director of taxation by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1, next.

(f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(g) The term 'owner' as used in this section includes lessees of real property whose lease term extends at least ten years from the date of the petition."

* * * * *

Illinois

The 1959 session of the Illinois General Assembly passed a measure, one paragraph of which would have protected farmland on the rural-urban fringe from being assessed at its potential value for suburban development. This measure was vetoed by the governor.

The significant portion of the bill follows:

SECTION 20. Real property shall be valued as follows:

1. Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a voluntary sale.

* * * * *

6. If used exclusively for agricultural purposes and lying more than 25 miles from any city, village or incorporated town in this State having a population of 500,000 or more, it shall be valued on the same basis as other agricultural land in the assessment district regardless of its location.28/

28/ House Bill 404, Illinois General Assembly, 1959 Session.

Governor Stratton's veto message stated that he vetoed the measure because: "The provision added to Section 20 is vague, indefinite, and ambiguous. It is unrealistic in that it seeks to ignore the location of real property in arriving at a valuation for tax purposes".29/

Indiana

Two measures providing for preferential assessment have been introduced in the Indiana Legislature. One, introduced and approved in 1963, provides for the assessment of land used for agriculture as "agricultural land." The other bill, introduced in 1959, was not enacted. That measure would have allowed owners of land located within farm conservation districts to receive a deferral of a portion of real property taxes until the land changed use.

The current sections of the Indiana statutes dealing with the preferential assessment of farmland, based on the 1963 legislation, are reprinted below:

> 64-711a Assessment of agricultural land -- It is the consensus of the Indiana general assembly now assembled that modification in the procedures used for assessing and reassessing lands devoted to agricultural uses is necessary in order to assure a proper and equitable taxation of such land.
>
> 64-711b Continued assessment as agricultural land while so used-- In assessing or reassessing lands devoted to agricultural use, such land shall be assessed as agricultural land for so long as such use continues; Provided That this section and section 64-711a shall not apply to land purchased for industrial, commercial or residential uses.
>
> 64-712 Personnel for making reassessment -- ...In making any such reassessment of land used for agriculture, the county assessor shall appoint a committee of five (5) competent persons, at least two (2) of whom are agricultural land owners in said county to help determine land values. This shall be known as the county land advisory committee. The indicators of value determined by this committee will be submitted as guides in determining values.

The bill introduced in 1959 contained the following provisions:

> A BILL FOR AN ACT concerning the establishment of farm conservation districts; the granting of tax deferrals within farm conservation district to farm land withheld from development; the execution of covenants restricting the use of farm land to farm purposes; the setting aside of land for community facilities in advance of condemnation; and the levy and collection on land first subject to development of a development charge for the financing of needed community facilities.

29/ William G. Stratton, letter to Illinois Secretary of State, July 16, 1959.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA:

SECTION 1. Statement of Policy. Rapidly mushrooming urban growth has created serious land conservation problems in areas subject to impending urbanization. Rising property taxes in rural areas have often made farming financially prohibitive, so that farm land has been sold prematurely for residential subdivision and other urban development. Municipal governments, however, have been without the authority to protect sites in presently open areas that have been designated for recreational and other needed community facilities and have been without the funds necessary to provide needed community facilities in areas subject to premature development. It is the purpose of this act, through the use of tax deferrals and development charges, to provide for the conservation of presently undeveloped land, the more orderly development of urban areas, and the more adequate provision of needed community facilities.

* * * * *

SECTION 4. Designation of Urbanizing Area. A plan commission may declare by resolution, if satisfied of the fact, that the whole or any part of a county within its jurisdiction constitutes an urbanizing area.

SECTION 5. Tax Deferrals Under Comprehensive Plan.

(a) In an urbanizing area for which all or part of a comprehensive plan has been adopted the plan commission may at any time designate any land classified in an agricultural, industrial or recreational use district as an agricultural, industrial or recreational conservation district. A farm located in a conservation district shall receive a twenty per cent deferral from taxes.

(b) The reclassification of a use district to other than agricultural, industrial or recreational uses shall revoke its prior designation, in whole or in part, as a conservation district. Without changing the applicable use classification the plan commission may also withdraw a farm from a conservation district, and may also declassify an area classified as a conservation district.

(c) When a farm is removed from a conservation district by a plan commission the tax deferrals that have been granted because of this classification shall terminate as of the taxes that become a lien in the year during which the removal takes place. However, accumulated tax deferrals are not payable until the farm is developed, as provided in Section 11.

SECTION 6. Use Convenants. The owner of a farm located in a conservation district may apply to the plan commission for an additional five per cent deferral from taxes. The application shall be accompanied by a written convenant running with the land, binding the owner of the farm to its use only for farm purposes for a period to be specified by the plan commission. The plan commission may grant the additional tax deferral, subject to the execution of the covenant with the owner of the farm.

SECTION 7. Tax Deferral for Community Facility Preserve. A public authority, having first obtained the written approval of the plan commission, may designate all or part of a farm or other open tract of land as a community facility preserve. "Community Facility Preserve" means any land which will be needed for a community facility in the reasonably foreseeable future. A farm or other open tract of land, when placed in a community facility preserve, shall receive an additional thirty per cent deferral from taxes. This additional tax deferral shall continue until the land is privately developed or is publicly condemned for the designated purpose, even though a tax deferral granted because of a farm's location in a conservation district is terminated for other reasons.

SECTION 8. Adjusted Tax Rate. The plan commission shall annually report all current tax deferrals to the County Auditor in writing, at a time to be fixed by him. The County Auditor shall calculate an adjusted tax rate which, less the deferrals, will raise an amount equal to that which would have been raised under the tax rate originally determined by the County Board of Tax Adjustment.

* * * * *

SECTION 11. Payment of Deferred Taxes.

(a) Upon the private development of a farm located in a conservation district, and immediately following the grant of an application to develop privately land designated as a community facility preserve, all accumulated real property taxes are payable, without interest. When a tract or part of a tract to which a tax deferral has been granted is condemned by a public authority the total or pro rata part of any deferred real property taxes are payable, without interest. Deferred personal property taxes are payable, without interest when a tract is privately developed, as provided above, or when all the tract is condemned by a public authority.

(b) When accumulated tax deferrals become payable on land that is privately developed for industrial purposes, they shall be further deferred, without interest, until such time as the land is no longer used for industrial purposes. However, current tax deferrals on land developed for industrial purposes shall terminate as of the taxes that become a lien in the year during which the development takes place.

SECTION 12. Development Charges.

(a) A development charge may be levied by the plan commission upon the private development of land for residential purposes.

(b) The plan commission shall first determine the probable investment in community facilities which will be needed to serve adequately the area to be developed. This determination shall be made with the advice and upon the estimate of the public authorities exercising jurisdiction in the area to be developed, but shall not include any community facility

(1) for which a special assessment is authorized by any other law or

(2) which is provided as a condition to plan commission approval of the subdivision plat.

(c) The development charge shall be a sum equal to the amount determined by the plan commission to be needed for capital investment in community facilities for the area to be developed, less ten per cent of the probable assessed valuation of the area after it is developed.

(d) No development charge shall exceed three hundred dollars per residential lot. An owner of a lot, parcel or tract of land against which a development charge has been assessed may take an appeal from the assessment by certiorari.

(e) No development charge shall be levied for a community facility to be built or constructed by the State of Indiana.

SECTION 13. Collection.

(a) Development charges and tax deferrals, when payable, shall be reported in writing by the plan commission to the County Treasurer for collection. With the approval of the County Treasurer, development charges and accumulated tax deferrals, when payable, may be further deferred for collection or may be made payable on an installment basis without interest. Payment shall not be further deferred for a period in excess of ten years.

(b) Accumulated real property tax deferrals and development charges, when payable, shall become a lien as for real property taxes. This lien shall attach individually and on a pro rata basis against all of the lots, parcels, and tracts into which the land that has received the tax deferral shall be divided. Delinquent land may be sold to satisfy this lien in the same manner in which land is sold to satisfy real property taxes, subject to any private convenants applicable to the use of the land or its development. Deferred personal property taxes, when payable are collectible and become a lien upon the property taxed as is presently provided by law.

(c) Collected tax deferrals and development charges shall be distributed pro rata to the public authorities exercising jurisdiction in the area to be developed. Distribution shall be made on the basis of the plan commission's determination under Section 12 of the required investment in needed community facilities.

SECTION 14. Annexation. Upon the annexation by a city or town of a farm previously classified in a conservation district the tax deferrals that have been granted on the basis of this classification shall terminate as of the taxes that become a lien in the year during which the annexation becomes effective. However, accumulated tax deferrals are not payable until the farm is developed, as provided in Section 11. Upon the effective date of the annexation the city or town plan commission, if any, shall exercise all functions that have been delegated to plan commissions as previously defined in this act, except those relating to the granting of tax deferrals.

SECTION 15. Hearings. At any stage in the designation of urbanizing areas, conservation districts or community facility preserves a plan commission or public authority may hold a public hearing, having first given due notice to all of the land owners it considers to be affected by the proposed designation. Prior to the determination of a development charge a plan commission shall hold a public hearing, having first given due notice to all of the land owners against whom the development charge will be assessed.

SECTION 16. Penalties. All deferred taxes and development charges are immediately payable, without the privilege of paying in installments, whenever

(a) Land located in a community facility preserve is privately developed without permission having previously been obtained from the plan commission; or

(b) Land is privately developed without the prior filing of the report required in Section 10 of this act.30/

Iowa

Iowa has no general preferential assessment law. Two laws do exist, however, which make an effort to reduce the tax burden on undeveloped land within the city limits. One law, passed in 1879, provides that cities may not tax agricultural land within their limits in lots of 10 acres or more other than for street purposes. Another law, passed in 1955, provides that when a plat of land is filed, the individual lots, until sold, shall be assessed for taxation at an amount equal to each lot's proportionate share of the assessed valuation of the entire tract immediately prior to platting.

These laws state:

404.15 Agricultural lands. No land included within the limits of any municipal corporation which is not laid off into lots of ten acres or less, and which is also in good faith occupied and used for agricultural or horticultural purposes nor the personal property used in connection therewith shall be taxable for any city or town purpose except that said lands and all agricultural or horticultural lands shall be liable to taxation not to exceed one and one-fourth mills in any one year for street purposes.

409.48 Assessment of platted lots. When any plat is made, filed and recorded, the proprietor or owners under the provisions of this chapter the individual lots contained therein shall, until sold, leased or improved be assessed for taxation at an amount equal to each individual lot's proportionate share on an area basis of the assessed valuation of the entire tract immediately before the platting thereof. When an individual lot has been sold, leased or improved it shall then be assessed for taxation as provided by chapters 428 and 441.

30/ 1959 Indiana Legislature, Assembly, Rural Areas Conservation and Development Act of 1959.

Maryland

Maryland was the first State in recent years to enact preferential assessment legislation. In 1956, the Maryland General Assembly approved a measure which provided that land devoted to farm use should not be assessed on the basis of any other more intensive use. This act was vetoed on the grounds that it was a departure from the full cash-value concept of assessment. The bill was then passed over the veto. In 1957, the legislature repealed this act and passed a new act containing the same provisions as well as additional criteria for defining farmland. This act was overruled by the Maryland Court of Appeals in January 1960, on the ground that the partial exemption failed to meet the two requirements of a valid tax: reasonableness and public purpose. The case was reheard approximately a month later and the act was again ruled unconstitutional. This time the ruling was based on the finding that the law represented an improper attempt to classify land for tax purposes.

The Maryland General Assembly, however, repealed the preferential assessment law and reenacted it with amendments. At this time the general assembly also passed two resolutions containing constitutional amendments to be submitted to the public at the next general election. These constitutional amendments were designed to overcome the constitutional provisions forbidding preferential assessment. These constitutional amendments were approved by the voters in November 1960.

The 1956 law, passed over the Governor's veto, read as follows:

> . . .Lands which are actively devoted to farm or agricultural use will be assessed on the basis of such use, and shall not be assessed as if subdivided or on any other basis.31/

In his veto message, the Governor emphasized that this bill was a departure from the concept of assessing property at its full cash value:

> House Bill 729 attempts to change the general assessing formula contained in Section 13 of Article 81 of the Annotated Code of Maryland (1954 Supp.), by providing that lands devoted to farm or agricultural use shall be assessed on that basis, and not as if subdivided "or on any other basis". Under this bill, the tax assessor would be required to close his eyes to the development of the surrounding area, sales and other indicia of land values. This preferential treatment would have no necessary relationship to or benefit for farming. Thus, the owner of a very valuable tract of vacant land in a thriving commercial section might claim the benefit of this bill by establishing a small truck garden on his plot of land, while waiting for it to enhance still further in value.

31/ 1956 Maryland Laws, chapter 9.

> Not only would the bill undermine the concept of assessing property at its full cash value, but, in fact, it would only have meaning and be of value to taxpayers where the land involved was really not farm land. Since assessing officials advise that this is a serious and illogical backward step which would impede efforts to establish fair, proper, and uniform assessments at full cash value under the law, I have vetoed House Bill 729.32/

The 1957 Session of the General Assembly repealed and reenacted this section, adding criteria defining "lands which are actively devoted to farm or agricultural use."33/ This law became effective on June 1, 1957, as sec. 19 (b) of article 81 of the Maryland Code (1957):

> (b) Farm or agricultural use--Lands which are actively devoted to farm or agricultural use shall be assessed on the basis of such use, and shall not be assessed as if subdivided or on any other basis. The State Tax Commission shall have the power to establish criteria for the purpose of determining whether lands subject to assessment under this sub-section are actively devoted to farm or agricultural use by the adoption of rules and regulations. Such criteria shall include, but shall not be limited to, the following:
>
> 1. Zoning applicable to the land.
>
> 2. Present and past use of the land including land under the soil bank provisions of the Agricultural Stabilization Act of the United States Government.
>
> 3. Productivity of the land including timberlands and lands used for reforestation.
>
> 4. The ratio of farm or agricultural use as against other uses of the land.

On January 19, 1960, the court of appeals, in the case of State Tax Commission v. Gales34/ ruled the statute unconstitutional, holding that it was unreasonable and served no public interest, and that it operated to give the owners of farmland in some areas a tax advantage over their neighbors.

32/ Governor Theodore R. McKeldin, letter to Speaker of House of Delegates, June 3, 1955.

33/ 1957 Maryland Laws, ch. 680.

34/ 157 A. 2d 420, withdrawn by Order of the Court. Decision published in Baltimore Daily Record of February 9, 1960.

In overturning section 19 (b), the majority opinion pointed out that the constitution of Maryland, while permitting classification of improvements on land and of personal property for tax purposes did not permit classification of land.35/ The court's argument was not based on this point, however.

The court's opinion read, in part:

> It seems to us unnecessary to reach a broad, general decision as to whether a partial exemption in favor of agricultural lands as against others is permissible under our Constitution, since we are of the opinion that Section 19 (b) fails to meet two requirements of a valid tax exemption: reasonableness and a public purpose. The two are closely connected in this case. The reasonableness of the exemption can, we think, hardly be dissociated from a reasonable classification upon which to support it, and a public purpose calls for more than relief from hardship which may fall upon some persons whose lands have appreciated in value through no act or choice of their own.
>
> The Commission, as above stated, seeks to uphold the statute as a partial exemption from taxation in aid of agriculture. All lands devoted to agricultural or farming use are subject to assessment under it on the basis of such use. That in itself, of course, creates no distinction between agricultural lands, but it does set agricultural land apart from other land. If (and we merely assume, but do not decide) it is permissible to do so, does the statute really operate to promote agriculture or does it really operate so as to give the owners of farm lands in some areas a tax advantage over their neighbors? We think that the latter is the case.
>
> Assessments of land are normally based on the highest and best use of the land. In a primarily agricultural area, the valuation so arrived at thus will ordinarily coincide with the valuation of the land for agricultural purposes. We believe that this has been true and will continue to be true with or without Sec. 19 (b). In other words, in farming areas, this statute confers no tax benefits at all on agricultural lands or on agriculturalists; it simply makes no difference. It therefore cannot be fairly described as an aid to agriculture in general on any statewide or even on any county wide basis.
>
> Sec. 19 (b) would, however, produce a marked effect and would operate to the advantage of lands devoted to farm or agricultural use in areas where, by reason of the general increase in land values, the value of land for nonagricultural purposes is greater than its value for farm or agricultural use. Typically, this would be the case in an area of expanding suburban, residential development. It might also occur in the vicinity

35/ Article 15, Declaration of Rights, Maryland Constitution.

of a growing or developing commercial or industrial area. The maintenance of agricultural operations in any such area has only a tenuous connection with the protection or promotion of agriculture in general. On the other hand, the tax advantage to the owners of lands in such areas devoted to agricultural or farm use for their private benefit is too obvious to require extended comment. By maintaining farming operations themselves, or by renting the land to others to do so, the owners can hold the land while it appreciates in value and while their neighbors carry a proportionately much heavier share of the tax burden. Not agriculture or agriculturalists in general are favored by such a tax differentiation, but only the owners of properties devoted to agricultural or farm use in areas which have ceased to be primarily agricultural in character. We do not believe that the relatively slight contribution to the protection or promotion of agriculture which the agricultural use of such lands may make is sufficient to warrant a separate classification of such lands as distinguished from neighboring lands, which would support a tax exemption. No substantial agricultural interest is fostered by the exemption, and by the same token no real public interest is to be served by it. The result of the statute thus is an inequality of taxation which is justified neither by classification nor by any public purpose to be served. Even among the beneficiaries of the exemption there would be considerable inequalities. Generally speaking the benefit would increase in proportion to the pressure of suburban development. Such an exemption cannot be sustained under Article 15 or under the authorities above cited relating to tax exemptions. We feel forced to this conclusion, notwithstanding the hardship which may fall upon the genuine farmer who finds himself and his land engulfed by the tide of spreading suburbs.

A dissenting opinion stressed the public interest in sec. 19 (b):36/

It is difficult for me to conceive of how a statute that affects so vital a part of this state's economy as its agricultural industries, embracing its dairy farms, beef cattle raising, nurseries and general farming enterprises, etc., can be divorced from the state's public interest and "public policy." There can be little doubt that this act does not affect small isolated spots in the State, but quite a number of the whole areas of different counties where the actual value of the land is so high that, if assessed at its full value, it cannot sensibly and profitably be utilized for agricultural purposes. It is a matter of general knowledge that there are many places in the State where farmers, who have tilled their soil for many years

36/ The dissenting opinions filed in both this hearing and in a later rehearing were identical with the exception of a few introductory comments. For the complete dissent see State Tax Commission v. Wakefield, 161 A. 2d 676, June 13, 1960.

and who, either by choice or because of disqualifications for other vocations, desire to continue to do so. They sell their produce in nearby markets and have been able to make reasonable returns for their labors and upon the investments involved. The march of time goes on and they find themselves engulfed either because of nearby housing developments, business enterprises or country estates, in a situation where, if their land be assessed at its actual value, they can no longer farm their land and obtain a reasonable return. In many cases, it is the farmer's home, and has been for many years. His only recourse is to sell and retire, if he can do so, or desires to do so, or to leave his home and go to a more remote location to continue his farming activities.

As the situation now stands, the housing developer has a distinct advantage over the agriculturist. If the developer can purchase and develop land near a farm and then the farm is assessed as of the value of subdivision property, the farmer is required to sell or operate at a loss or so small a gain that it does not pay him to continue.

The disruptive effect of these forced sales upon the farmers, his family and the public is apparent. There is an immediate dislocation not only of the farmer and his family, but also upon the laboring force formerly employed, with its resulting problems of unemployment, etc., and the land itself is withdrawn from the production of the necessities of life.

And the above is only, more or less, an illustration. In the large agricultural areas of this State, where the problems of the housing developments have not arisen but the value of land (which can be utilized for country estates, water-front property, etc.) has increased and the problems of the high cost of labor, fertilizer and machinery and the low price of their produce confronts the farmer, again shows, in my opinion, that the statute is reasonable and based upon a sound public policy of encouraging agriculture. There are many other apt illustrations that could be made, but I shall not labor the factual situation much further.

Of course, there are instances where some speculators would benefit from the statute, but the statement that seldom, if ever, does tax fall uniformly and equally in all respects, upon every taxpayer, which is apposite here, has become so trite in the text-books and cases, no citation of authority to support the same will be made.

> I turn not to the law with reference to whether the statute under consideration is "reasonable" and based upon "public policy." All presumptions are strongly in favor of the constitutionality of a statute, which should not be held invalid unless it is clear, plain and palpable that such decision is required.
>
> In Dickinson vs. Porter, 35, N. W. 2d 66 (Iowa, 1948) (Appeal dismissed 338 U. S. 843), referred to (but not followed) by the majority as the leading case that upholds the partial exemption of agricultural lands, the Supreme Court of Iowa went thoroughly into the subject and carefully treated and analyzed the constitutional questions involved, including those of "reasonableness" and "public policy." That Court has expressed my views so thoroughly upon the law that I shall conclude by simply quoting therefrom:

There follows a lengthy quotation from Dickenson v. Porter, which upheld the right of the Iowa Legislature to grant a partial exemption on agricultural lands. The dissenting opinion concluded:

> I think the statute grants a reasonable partial exemption from taxation to "lands which are actively devoted to farm or agricultural use"; and that it is based upon "public policy"; consequently, it should be upheld as a valid and constitutional legislative enactment.

A month after this opinion was handed down, a motion for reargument was granted and the original opinion withdrawn. On reargument the decision was reaffirmed, but on slightly different grounds.37/ The majority opinion states that, in the original ruling:

> . . .we assumed, without deciding, that, as the appellant State Tax Commission (now the State Department of Assessments and Taxation) contended the Legislature had power to grant a partial exemption from taxation of land. Even with that assumption, a majority of this Court was of the opinion that the classification which the statute undertook to make was not sustainable. The appellant contended in its motion for reargument that this conclusion was erroneous and also that it was reached upon an inadequate record insofar as the ground of decision was concerned. We withdrew our original opinion upon granting the motion for reargument, and we have now considered the case anew. This opinion supersedes our original opinion, and leaves open the question upon which that original opinion turned.

37/ State Tax Commission v. Wakefield, 161 A. 2d 676, June 13, 1960.

The majority again held the law unconstitutional, but on the ground that the law represented an invalid attempt to classify land for tax purposes:38/

> We hold that the Farm Assessment Act attempts to set up a separate classification of land for tax purposes, that in so doing it contravenes the limitations upon classification contained in the present Article 15 of the Declaration of Rights and hence is unconstitutional.

Article 15 of the Declaration of Rights now reads as follows:

> That the levying of taxes by poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and subclassification of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or subclass of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy . . .

On March 23, 1960, the Maryland General Assembly adopted three items of legislation. One repealed and reenacted, with amendments, section 19 (b) of article 81.39/ The other two were proposed amendments to the State constitution, designed to overcome the defects cited in the court's ruling.40/

Following the legislature's action, section 19 (b) of article 81 reads as follows:

> 19 b. Farm or agricultural use. Lands which are actively devoted to farm or agricultural use shall be assessed on the basis of such use, and shall not be assessed as if subdivided, it being the intent of the General Assembly that the assessment of farm land shall be maintained at levels compatible with the continued use of such land for farming and shall not be adversely affected by neighboring land uses of a more intensive nature. The General Assembly hereby declares it to be in the general public interest that farming be fostered and encouraged in order to maintain a readily available source of food and dairy products close to the metropolitan areas of the State, to encourage the preservation of open space as an amenity necessary to human welfare and happiness, and to prevent the

38/ 161 A. 2d, at 686.
39/ Ch. 52, Laws of 1960.
40/ Ch. 64, Laws of 1960.

> forced conversion of such open space to more intensive uses as a result of economic pressures caused by the assessment of land at a rate or level incompatible with the practical use of such land for farming. The State Department of Assessments and Taxation shall establish criteria for the purpose of determining whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms and qualify for assessment under this subsection. Such criteria shall be promulgated in rules and regulations which shall include but shall not be limited to the following.
>
> (1) Zoning applicable to the land
> (2) Present and past use of the land
> (3) Productivity of the land
> (4) The ratio of farm or agricultural use as against other uses of the land

One of those constitutional amendments sent before the public provided that article 15 should be amended, replacing the provision requiring that all property taxes "be uniform as to land within the taxing district and uniform within the class or subclass of improvements on land and personal property". The amendment required that "all taxes shall be uniform within each class or subclass of land, improvements on the land and personal property which the respective taxing powers may have directed to the tax levy."

The second constitutional amendment added article 43 to the Declaration of Rights of the constitution of the State of Maryland.

Article 43 reads as follows:

> That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, and promotion of literature, the arts, sciences, agriculture, commerce and manufacturers, and the general melioration of the condition of the people. The legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if subdivided.

The two constitutional amendments were submitted to the voters at the 1960 general election. Both were approved by large majorities.

Senate Bill 252, introduced in the 1966 session of the legislature, would have changed the Maryland law to a deferred tax, with a 5-year "rollback". The bill did not pass, however.

Massachusetts

Four measures providing for preferential assessment of farmland have been introduced in Massachusetts. None of these bills has passed. The first bill was introduced in the 1958 session of the State legislature "to accompany the petition of the Massachusetts Farm Bureau Federation, Inc., for legislation relative to the valuation of agricultural property subject to taxation." This bill would have required the assessment of land and buildings devoted to agricultural use on the basis of such use.

The 1958 bill would have amended section 38 of chapter 59 of the General Laws to include the following statement:

> Land and buildings which are actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if subdivided or on any other basis.41/

A proposal submitted in the 1961 legislative session would have permitted postponement of part of the taxes on "classified open land." This bill also was not enacted. The proposed bill is reprinted in full below:42/

> SECTION 1. The owner of any and all land shown on an official map or subdivision plat adopted in accordance with the provisions of chapter forty-one of the General Laws as a "new or enlarged park of new or widened public way" (section eighty-one F), or designated as a "park or parks" on a subdivision plat (section eighty-one W); or included in a zoning district for agricultural, forest or open space uses under a zoning ordinance or by-law adopted in accordance with the provisions of chapter forty A of the General Laws, may apply to the assessors in any city or town in which such land is located to have such lands listed as "classified open land." The application shall include a full description of the land and improvements thereon, and of the extent and nature of the restrictions upon its use by reason of its inclusion in the official plan, approved subdivision plan or zoning plan as an open space.
>
> SECTION 2. Upon receipt of any application for listing of land as "classified open land," the assessors shall, in consultation with the city or town planning board, determine whether or not the land described therein is restricted against building and development in a manner to preserve its character and usefulness as an open space, and upon finding to that effect, concurred in by the planning board shall issue a certificate to the owner including the description and restrictions.

41/ Senate No. 535, 1958 Session.
42/ House No. 850, 1961 Session.

SECTION 3. Upon recording of the certificate by the owner with the registry of deeds, the owners of "classified open land" shall receive a rebate of the real property taxes assessed upon the fair market value of said land, as follows:--For the first three years after registration of ninety per cent, for the succeeding seven years, of seventy per cent, and thereafter, of fifty per cent; provided, however, that whenever the restrictions on said "classified open land" or any part thereof are in any way relaxed through change of zoning, granting of a zoning exception or variance, change of the official map, or automatic release or other procedure for all or any part of such "classified open land," the assessors shall notify the owner and record with the registry of deeds a notice of cancellation of the certificate, and the portion of the taxes rebated, over the whole period during which the rebate has been in effect, shall become due and payable in the tax year during which such relaxation or change in the restrictions is made.

SECTION 4. The owner of "classified open land" may continue any uses or structures existing at the time the land is certified which do not conflict with the provisions of other laws; and all structures, improvements or personal property on the land shall be subject to taxation in the same manner as other similar property.

SECTION 5. Whenever any "classified open land" is sold or there is change of title, all the obligations and privileges connected with such land shall devolve on the new owner.

SECTION 6. The owner of "classified open land" may withdraw all or portions of lands so certified at any time after three years from the date of record of the certificate from the status as "classified open land" by notice to the assessors in the city or town in which said land is located, and by payment in full of the taxes rebated since recording of the certificate applying to the land or portion of the land so withdrawn from the status. Upon receipt of such notice and payment the assessors shall record with the registry of deeds a notice of cancellation of the certificate or record an amended certificate, as may be appropriate.

Bills providing for preferential assessment were also introduced in both 1963 and 1965. These measures were referred to a special study commission for a report at a later date.

Michigan

There have been three attempts in Michigan to enact laws which might have provided for differential treatment of farm property. None has been successful. Two of these were attempts to amend the State constitution. The most recent attempt simply provided for a change in the property tax statutes. All the proposals are shown below.

The first attempt was made in 1959. The bill providing for a constitutional amendment failed to get out of committee. The significant section of the bill read as follows:

> SEC 3A. The legislature may provide by law that any city, when provided for by its charter, may create differential taxing districts within the city for operational expenses as long as the rate of taxes within the district is uniform.43/

House Joint Resolution CC of 1961 proposed a similar constitutional amendment which also died in committee. The significant portion of it follows:

> SEC 3A. The legislature may provide by law that assessing districts levying and collecting taxes against real property may assess improvements at a different rate than that imposed on land and permit varying rates of taxation within the district depending upon services being rendered by the assessing district.

The change proposed in 1962 would have amended the State property tax laws. This bill also died in committee. It stated:

> Each city may provide in its charter for creation of differential taxing districts within the city for operational expenses as long as the rate of taxes within the district is uniform.44/

43/ House Joint Resolution S, Regular Session of 1959.
44/ House Bill 338, Regular Session 1962.

Minnesota

Under Minnesota Law, all real property is assessed at true and full, or market, value.45/ All real property is then placed in one of several classifications, one of which is rural property.

Rural property is defined as real estate which is rural in character and devoted or adaptable to rural but not necessarily agricultural use. The homestead property in the rural real estate classification is subject to a tax on 20 percent of the first $4,000 of true and full valuation and a tax on 33 1/3 percent of its value in excess of $4,000. Nonhomestead rural real estate is subject to a tax on 33 1/3 percent of its true and full valuation.

Homestead property in the urban property classification is subject to a tax on 25 percent of the first $4,000 of true and full valuation and a tax on 40 percent of its value in excess of $4,000. Nonhomestead property in the all-other-property classification is subject to a tax on 40 percent of its true and full value. Other classes of real property are assessed at varying rates.

Therefore, while Minnesota law requires the true and full value to be placed on "rural" real estate, preferential taxation is applied to this property in that a smaller portion of the total value is subject to taxation than for most other real property.

Nebraska

In 1965, the Nebraska Legislature passed a resolution containing a constitutional amendment which would have allowed preferential assessment. The constitutional amendment was submitted to the voters at the November 1966 general election and was defeated.

The amendment would have made the following change in the State constitution:

> . . .The legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use, shall, for property tax purposes be that value which such land has for agricultural or horticultural use without any regard to any value which such land might have for other purposes or uses. . .46/

45/ SEC. 273. Minnesota Statutes (1957).
46/ Legislative Bill 434, 1965.

Nevada

There have been two preferential assessment bills introduced in Nevada. The first was not enacted. The second, a bill introduced in 1961, was approved by the legislature and the Governor. In May of 1964, however, this law was declared unconstitutional by the Nevada Supreme Court. Following the court's action the Nevada Legislature repealed the law.

The first preferential assessment bill introduced in Nevada attempted to add to the State statutes a new section which would have read as follows:

> In assessing property which is zoned and used exclusively for agricultural or recreational purposes, and as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future, the assessor shall consider no factors other than those relative to such use.47/

This bill was not approved.

The 1961 Session of the Nevada Legislature enacted a preferential assessment law which provided that land used exclusively for agricultural purposes may be assessed at full cash value for agricultural use only. The act also provided for the recapture of a portion of the deferred taxes on change in land use. The act contained the following provisions:

> SECTION 2.
>
> 1. Any owner of land which is used exclusively for agricultural purposes, but has a full cash value for other purposes greater than its full cash value for agricultural purposes, may contract with the county assessor for the assessment of and payment of taxes on such land as provided in Sections 2 and 3 of this act.
>
> 2. The contract may be entered into prior to November 1 of any year and shall provide
>
> (a) That the land shall be assessed at its full cash value for agricultural purposes only, and, at the same time, the assessor shall make and enter as a notation on the assessment roll a potential assessment based upon the full cash value of the land for purposes other than agricultural purposes.
>
> (b) That the owner shall pay taxes only on the basis of the assessment of the land for agricultural purposes, unless he sells the land or changes its use.

47/ Senate Bill 54, 1960.

(c) That when the land is sold or its use changed, the owner will pay in additional taxes the difference between the taxes paid or payable on the basis of the assessment for agricultural purposes during the 5 years immediately preceding the year in which the sale or change of use occurs and the taxes which would have been paid or payable during such period on the basis of the potential assessment for purposes other than agricultural purposes.

(d) That if the land is sold or its use changed within 5 years of the date of the contract, the owner will pay such additional taxes for the year in which the contract was made and for each year intervening between such year and the year in which the sale or change of use occurs.

(e) That the additional taxes due on the basis of the potential assessment shall become a lien upon the land on the date the land is sold or its use changed.

3. No contract entered into pursuant to the provisions of this section shall be valid until recorded in the office of the county recorder of the county or counties in which all or any part of the land is located.48/

The Nevada Supreme Court, on March 19, 1964, declared the State's preferential assessment law unconstitutional. In its opinion the court said that the problem of the constitutionality of the classification of land for tax purposes has been approached from the standpoint of three different theories:

> First, that a legislature, in the absence of constitutional provision, has no authority to differentiate between ad valorem tax requirements; second, that such a division between agriculture and non-agricultural lands is an unreasonable and arbitrary classification; and third, that such an attempted differentiation creates an illegal partial exemption.

The court then went on to compare the facts of the Nevada case with this standard.

> It is self-evident under Nevada Law that no special laws can be passed "for the assessment and collection of taxes for state, county and township purposes" (Article IV, Section 20); that "all laws shall be general and of uniform operation throughout the State" (Article IV, Section 21); that the "Legislature shall provide by law for a uniform

48/ Ch. 300, Nevada Statutes, 1963.

> and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property" (Article X, Section 1); that "all ad valorem taxes should be of a uniform rate of percentage" (State v. Eastabrook, 3 Nev. 173.177); and that as a proposition of general rule of law, a partial exemption is not to be favored (State Tax Commission v. Wakefield (Md.) (222 Md. 543), 161 A 2d 676). Therefore, in deciding the constitutionality of N.R.S. 361.313-314, the ancient principles of uniformity, equality, justness and fairness permeate the law, principles which cannot now be ignored. Applying those precepts, it is eminently clear that the owners of agricultural property have been given a distinct tax advantage over other real property owners, something which I do not believe was contemplated by the framers of our Constitution. . .49/

Following the Court's action the Nevada Legislature repealed the preferential assessment law.

New Jersey

Two preferential assessment laws have been enacted in New Jersey. The first law, enacted in 1960, provided that the assessed value of agricultural land shall not be deemed to include value for nonagricultural use. This law was declared unconstitutional in 1962. In 1963, a constitutional amendment was ratified which permitted the preferential assessment of farmland. Following the approval of this constitutional amendment, the present preferential assessment law was adopted. This law, except for the now repealed Nevada law, was the first adopted which included a tax deferral provision.

The first preferential assessment bill was included in chapter 51, Laws of 1960, an act which made many changes in the taxation of property in New Jersey. This measure contained a provision stating that:

> In the assessment of acreage which is actively devoted to agricultural use, such value shall not be deemed to include prospective value for subdivision or nonagricultural use.

This provision was declared void on June 25, 1962, when the Supreme Court of the State of New Jersey in Switz v. Kingsley 50/ upheld the constitutionality of all of chapter 51 with the exception of the provisions concerning the assessment of farmland:

> It is enough to note that with respect to real property made taxable by statute for local purposes, Art. VIII, § I, par. 1, quoted above, explicitly forbids preferential treatment. It expressly requires that all real property assessed and taxed locally or by the State for allotment and payment to taxing

49/ Boyne v. State 390 P 2d 255.
50/ 173 A 2d 449.

> districts "shall be assessed according to the same standard of value" and "shall be taxed at the general rate of the taxing district in which the property is situated, for the use of such taxing district."

From the foregoing, the court said, the validity of the agricultural provisions of chapter 51 is readily determined.

> The provision of section 23 that in the assessment of acreage actively devoted to agricultural use, the taxable value "shall not be deemed to include prospective value for subdivisions or nonagricultural use," is plainly invalid. We need not delay to consider the suggestion that this provision creates but a "rebuttable" presumption or that the Legislature had in mind only such "prospective value" as could not be considered in any event. However the provision may be viewed, it is inescapable that the Legislature intended some impact upon the "standard of value" favorable to this class of real property. Art VIII, s I, paragraph I, plainly requires the application of the same standard of value and the same rate tax, to all real property taxable for local use. Hence we agree with the trial court that the quoted provision of section 23 is invalid.

Following the court's decision the Governor's Farmland Assessment Committee prepared a constitutional amendment for the legislature which would provide a constitutional basis for preferential assessment legislation. The significant section of the constitutional amendment follows:

> 1. (a) Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.
>
> (b) The Legislature shall enact laws to provide that the value of land, not less than 5 acres in area, which is determined by the assessing officer of the taxing jurisdiction to be actively devoted to agricultural or horticultural use and to have been so devoted for at least 2 successive years immediately preceding the tax year in issue, shall, for local tax purposes, on application of the owner, be that value which such land has for agricultural or horticultural use.

> Any such laws shall provide that when land which has been valued in this manner for local tax purposes is applied to a use other than for agriculture or horticulture it shall be subject to additional taxes in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued and assessed as otherwise provided in this constitution, in the current year and in such of the tax years immediately preceding, not in excess of 2 such years in which the land was valued as herein authorized.
>
> Such laws shall also provide for the equalization of assessments of land valued in accordance with the provisions hereof and for the assessment and collection of any additional taxes levied thereupon and shall include such other provisions as shall be necessary to carry out the provisions of this amendment.51/

This amendment when put before the voters was approved by a margin of more than two to one.

Following the approval of this constitutional amendment the New Jersey Legislature enacted a preferential assessment law in accord with these provisions. This law, which was passed in 1964, contained the following provisions:

> Be it enacted by the Senate and General Assembly of the State of New Jersey:
>
> 1. This act shall be known and referred to by its short title, the "Farmland Assessment Act of 1964."
>
> 2. For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural use.
>
> 3. Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting

51/ Senate Concurrent Resolution 16, 1963.

the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

4. Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

5. Land shall be deemed to be actively devoted to agricultural or horticultural use when the gross sales of agricultural or horticultural products produced thereon together with any payments received under a soil conservation program have averaged at least $500.00 per year during the 2 year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least $500.00 within a reasonable period of time.

6. Land which is actively devoted to agricultural or horticultural use shall be eligible for valuation, assessment and taxation as herein provided when it meets the following qualifications:

(a) It has been so devoted for a least the 2 successive years immediately preceding the tax year for which valuation under this act is requested;

(b) The area of such land is not less than 5 acres when measured in accordance with the provisions of section 11 hereof; and

(c) Application by the owner of such land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the assessor of the taxing district in which such land is situated on the form prescribed by the Director of the Division of Taxation.

7. The assessor in valuing land which qualifies as land actively devoted to agricultural or horticultural use under the tests prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, shall consider only those **indicia** of value which such land has for agricultural or horticultural use. In addition to use of his personal knowledge, judgment and experience as to the

value of land in agricultural or horticultural use, he shall, in arriving at the value of such land, consider available evidence of agricultural and horticultural capability derived from the soil survey data at Rutgers, The State University, the National Co-operative Soil Survey and the recommendations of value of such land as made by any county or State-wide committee which may be established to assist the assessor.

8. When land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural or horticultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year (the year of change in use) and in such of the 2 tax years immediately preceding, in which the land was valued, assessed and taxed as herein provided.

If in the tax year in which a change in use of the land occurs, the land was not valued, assessed and taxed under this act, then such land shall be subject to roll-back taxes for such of the 2 tax years, immediately preceding, in which the land was valued, assessed and taxed hereunder.

In determining the amounts of the roll-back taxes chargeable on land which has undergone a change in use, the assessor shall for each of the roll-back tax years involved, ascertain:

(a) The full and fair value of such land under the valuation standard applicable to other land in the taxing district;

(b) The amount of the land assessment for the particular tax year by multiplying such full and fair value by the average real property assessment ratio of the taxing district, as determined by the county board of taxation for the purposes of the county equalization table for such year, pursuant to sections 54:3-17 to 19 of the Revised Statutes;

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b) hereof; and

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under (c) hereof by the general property tax rate of the taxing district applicable for that tax year.

* * * * *

11. In determining the total area of land actively devoted to agricultural or horticultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities, but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area.

* * * * *

15. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural or horticultural use and compliance with the other requirements of this act and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural or horticultural use, under the conditions prescribed in this act.

16. Separation or split off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other action of the owner of such land, for a use other than agricultural or horticultural, shall subject the land so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the 5-acre minimum requirement and such other conditions of the act as may be applicable.

* * * * *

20. There is hereby created a State Farmland Evaluation Advisory Committee, the members of which shall be the Director of the Division of Taxation; the Dean of the College of Agriculture, Rutgers, The State University; and the Secretary of Agriculture. The committee shall meet from time to time on the call of the Secretary of Agriculture and annually determine and publish a range of values for each of the several classifications of land in agricultural and horticultural use in the various areas of the State. The primary objective of the committee shall be the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural or horticultural uses. In making these annual determinations of value, the committee shall consider available evidence of agricultural or horticultural capability derived from the soil survey at Rutgers, The State University, the National Co-operative Soil Survey and such other evidence of value of land devoted exclusively to agricultural or horticultural uses as it may in its judgment deem pertinent. On or before October 1 of each year, the committee shall make these ranges of fair value available to the assessing authority in each of the taxing districts in which land in agricultural and horticultural use is located.52/

* * * * *

New York

In 1965, a bill53/ to provide for deferred taxation of land devoted to agricultural or horticultural use was passed by the New York Assembly, but was vetoed. A similar bill54/ was passed in 1966, but vetoed. The relevant portions of the bill follow:

501. Farmland assessment.

1. For general property tax purposes, the value of land, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the two successive years immediately preceding the tax year in issue, shall, on application of the owner...be that value which such land has for agricultural or horticultural use.

52/ Ch. 48, Laws of 1964.
53/ A.B. 4160, Introduced March 8, 1965.
54/ A.B. 5333, Introduced February 15, 1966.

2. Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

3. Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

4. Land shall be deemed to be activity [sic] devoted to agricultural or horticultural use when the gross sales of agricultural or horticultural products produced thereon together with any payments received under a soil conservation program have averaged at least five hundred dollars per year during the two year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least five hundred dollars within a reasonable period of time.

5. The owner of farmland entitled to the property tax assessment of this section shall be a person who operates such farm as the principal means of livelihood for himself and the members of his immediate family, and makes his home at the site.

6. Land which is actively devoted to agricultural or horticultural use shall be eligible for valuation, assessment and taxation as herein provided when it meets the following qualifications:

(a) It has been so devoted for at least the two successive years immediately preceding the tax year for which valuation under this act is requested;

(b) Application by the owner of such land for valuation hereunder is submitted on or before March first of the year immediately preceding the tax year to the assessor of the taxing district in which such land is situated on the form prescribed.

7. The assessor in valuing land which qualifies as land actively devoted to agricultural or horticultural use under the tests prescribed by this section, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, shall consider only those indicia of value which such land has for agricultural or horticultural use. In addition to use of his personal knowledge, judgment and experience as to the value of land in agricultural or horticultural use, he shall, in arriving at the value of such land, consider available evidence of agricultural and horticultural capability and the recommendations of value of such land as made by any county or state-wide committee which may be established to assist the assessor.

8. When land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural or horticultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year (the year of change in use) and in such of the two years immediately preceding, in which the land was valued, assessed and taxed as herein provided.

If in the tax year in which a change in use of the land occurs, the land was not valued, assessed and taxed under this section, then such land shall be subject to roll-back taxes for such of the two tax years, immediately preceding, in which the land was valued, assessed and taxed hereunder.

In determining the amounts of the roll-back taxes chargeable on land which has undergone a change in use, the assessor shall for each of the roll-back tax years involved, ascertain:

(a) The full and fair value of such land under the valuation standard applicable to other land in the taxing district;

(b) The amount of the land assessment for the particular tax year by multiplying such full and fair value by the average real property assessment ratio of the taxing district, as determined by the board equalization table for such year;

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b) hereof; and

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under (c) hereof by the general property tax rate of the taxing district applicable for that tax year.

* * * * *

11. In determining the total area of land actively devoted to agricultural or horticultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and the like facilities, but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area.

12. All structures, which are located on land in agricultural or horticultural use and the farmhouse and the land on which the farmhouse is located, together with the additional land used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other land in the taxing district.

* * * * *

17. The taking of land which is being valued, assessed and taxed under this act by right of eminent domain shall not subject the land so taken to the roll-back taxes herein imposed.

* * * * *

20. The tax year nineteen hundred sixty-eight shall be deemed to be the first tax year to which the provisions of this section shall apply, and this section shall apply to the tax year nineteen hundred sixty-eight and subsequent tax years.

In 1966, the legislature created the New York State Commission on Preservation of Agricultural Land to study methods of preserving agriculture in the State.

Ohio

The Ohio General Assembly in its 1961 regular session enacted a measure which reduced the taxes on farmland by providing for the deferral of the collection of certain special assessments levied by counties for water works and sewer system improvements.

The section of the bill dealing with the deferral of assessment collections is reprinted below:

> Sec. 6103.051. At any time prior to the expiration of the five-day period provided by section 6103.05 of the Revised Code for the filing of the written objections, any owner of property to be assessed for an improvement under sections 6103.02 to 6103.30 inclusive, of the Revised Code may file with the board of county commissioners a request in writing for deferment of the collection of his assessment. Such request shall identify the property in connection with which the request for deferment is made, shall describe its present use, shall state its estimated market value, showing separately the value of the land and the value of the buildings thereon, shall state the reasons why a portion of the assessment should be deferred, and the amount to be deferred. The board shall promptly consider such request and, if it finds that it will be inequitable to certify the entire amount of such assessment upon completion of the improvement to the county auditor for collection, the board may order that the collection of a portion of such assessment, not exceeding seventy-five per cent thereof--shall be deferred as provided in section 6103.16 of the Revised Code. In determining whether it is inequitable to certify an assessment for immediate collection upon completion of the improvement, the board shall consider as significant the following factors: Whether or not the property is presently unimproved; whether or not it is presently being used for farming or agricultural purposes; the extent to which it is in immediate need of water service; whether the tentative assessment is a disproportionately high percentage of the estimated market value of the property after the improvement will have been completed. All requests for the deferment of the collection of assessments shall be considered by the board before it adopts the improvement resolution provided for by section 6103.06 of the Revised Code, and, if the board orders any part of any assessment to be deferred for collection, the sanitary engineer shall forthwith revise the list of tentative assessments to accord with the order of the board thereby showing the amount of each assessment to be collected upon completion of the improvement and the amount of each assessment to be deferred for collection. The decision of the board on any request for deferment shall be final and no appeal therefrom may be taken.

> The board may, for good cause shown and notwithstanding the failure of a property owner to file such a request within the period provided in this section, consider a request for the deferment of an assessment at any time prior to the adoption of the resolution confirming the revised assessment provided for by section 6103.15 of the Revised Code.

The measure also provides that:

> . . The board shall, annually, during the month of August, review all assessments which have been deferred for collection pursuant to section 6103.051 of the Revised Code as shown upon the auditor's "water-works record" and shall determine whether in view of changed circumstances concerning the property since the date of the original deferment, it is no longer inequitable to certify such assessment or any portion thereof to the county auditor for collection. On or before the second Monday in September, annually, the board shall direct the county auditor to place on the tax duplicate for collection such deferred assessments or portions thereof as the board determines should no longer be deferred, or which the property owner has requested to be collected, and thereupon the county auditor shall place the same upon the first duplicate prepared by him thereafter and shall collect the same as other taxes in such number of annual and semi-annual installments within a period of not more than twenty years as directed by the board, provided that the number of installments shall not be less than that required to coincide with the remaining principal payments on the bonds issued in anticipation of the collection of such assessments and in no event shall the payment period be less than five years. . .

Oregon

In 1961, Oregon adopted legislation allowing special assessment of land zoned for agriculture. This law was later modified both in 1963 and in 1965. In 1963, a tax deferral provision was added to the law. This provision made the landowner liable for the difference between the use-value assessment and the normal assessment, plus interest at 6 percent, for a period not to exceed 5 years, at the time the land changed use. At this time, the law also was extended to apply to farmland not zoned for agriculture. The 1965 legislature incorporated into the law a requirement stating that when comparable sales data are used for assessment the sales must represent sales for farm use.

Oregon law permits preferential assessment of all farmland--either zoned or unzoned--subject to two restraints: the land must have been a farm as defined by law for at least 2 years prior to the preferential assessment; and the taxes that have been deferred are due when the land changes use.

The original measure as passed in 1961 contained the following provisions:

> 308.237 Assessment of zoned farm land.
>
> > (1) Notwithstanding the provisions of ORS 308.205 or 308.235, farm land which is zoned exclusively for farm use by cities or, pursuant to ORS 215.010 to 215.190, by counties, shall be assessed at its true cash value for farm uses and not at the true cash value it would have if applied to other than farm uses.
> >
> > (2) Farm land subject to subsection (1) of this section shall mean any tract of five acres or more as shown on the tax roll for the current year which during the previous year was used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposal by marketing or otherwise. It includes but is not limited to such land used for agriculture, grazing, horticulture, forestry and dairying.
>
> 308.238. Effect of zoning withdrawal on assessment. Zoned farm land which is subject to ORS 308.237 for purposes of assessment on January 1 but is removed from such zoning before July 1 of the same year shall be assessed at its true cash value as defined by law without regard to ORS 308.237. If such land is withdrawn from such zoning on or after July 1 of any year, its value shall continue on the assessment role for that year as computed pursuant to ORS 308.237.

An early version of this bill contained a section providing for a deferral of a portion of the taxes rather than a reduction of the taxes. On withdrawal of the land from the agricultural zone, the owner would have been required to pay the deferred taxes due on the land.

The preferential assessment law was revised in 1963. After the changes made in 1963 took effect the law read as follows:

> Section 2:
>
> > (1) Zoning ordinances may be adopted under ORS 215.010 to 215.190, to zone designated areas of land within the county as farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise

provided in Section 3 of this 1963 Act. Farm use zones shall be established only when such zoning is consistent with the overall development plan of the county.

(2) As used in this section farm use means the use of land for raising and harvesting crops, or for the feeding, breeding, and management of livestock or for dairying, or for any other agricultural or horticultural use or combination thereof, and includes the preparation of the products used for man's use, and disposal by marketing or otherwise. It includes the construction and the use of dwelling and other buildings customarily provided in conjunction with the farm use.

Section 3: The following nonfarm uses may be established in any area zoned under ORS 215.010-215.190 for farm use.

(1) Public or private schools.

(2) Churches.

(3) Golf courses.

(4) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(5) Utility properties necessary for public service.

* * * * *

Section 5. Notwithstanding ORS 308.205 or 308.235, but subject to ORS 308.232:

(1) Any land which is within a farm use zone established under ORS 215.010 to 215.190 or 227.210 to 227.310, and which is used exclusively for farm use as defined in subsection (2) of section 2 of this Act, shall be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use.

(2) Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use as defined in subsection (2) of section 2 of this Act shall, upon compliance with section 6 of this Act, be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use. However, the provisions of this subsection shall not apply to any land with respect to which the owner has granted, and has outstanding, any lease or option to buy the surface rights for other than farm use.

(3) The entitlement of farm land to the special assessment provisions of this section shall be determined as of January 1. However, if land so qualified becomes disqualified prior to July 1 of the same year, it shall be assessed at its true cash value as defined by law without regard to this section. If the land becomes disqualified after July 1, its assessment for that year shall continue as provided in this section.

Section 6.

(1) Any owner of farm land entitled to special assessment under subsection (2) of section 5 of this Act must, to secure such assessment, make application therefor to the county assessor prior to February 1 of each year in which such assessment is desired.

(2) The application shall be made upon forms prepared by the State Tax Commission and supplied by the county assessor and shall include such information as may reasonably be required to determine the entitlement of the applicant.

(3) There shall be annexed to each application the affidavit or affirmation of the applicant that the statements contained therein are true.

Section 7. The State Tax Commission shall provide by regulation for a more detailed definition of farm use, consistent with the general definition in subsection (2) of section 2 of this Act, to be used by county assessors in determining entitlement to special assessment under subsection (2) of section 5 of this Act. Such regulations shall be designed to exclude from the special assessment those lands which are not bona fide farms for which the tax relief is intended.

Section 8. Upon approval of an application under section 6 of this Act, the county assessor shall transmit a copy of the approved application to the county clerk or recorder for recordation in the county record of deeds. The copy shall include a warning of the potential future tax liability.

Section 9.

(1) The county assessor shall assess land approved under section 6 of this Act at the special assessment provided in subsection (2) of section 5 of this Act and shall also enter on the assessment roll, as a notation, the assessed value for other than farm use which would have been entered for the land except for the special assessment.

(2) The county assessor shall include in the certificates made under ORS 311.105 a notation of the amount of additional taxes which would be due on each parcel of farm use land if the special assessment under subsection (2) of section 5 of this Act had not been used.

(3) The tax collector shall enter notations on all tax statements relating to farm use land specifying the amount of potential additional taxes computed under subsection (2) of this section for the current year and the total amount of such additional taxes computed for the five or lesser number of years, including the current year and immediately preceding years, in which such special assessment was in effect.

Section 10. Whenever land which has received special assessment as farm land under subsection 2 of section 5 of this Act thereafter becomes disqualified for such assessment there shall be added to the tax extended against the land on the next general property tax roll to be collected an amount equal to the sum of the following:

(1) The total amount of potential additional taxes computed for the land under subsection (2) of this Act during the last five or lesser number years in which farm use assessment was in effect for the land.

(2) Interest upon the amounts of additional tax from each year included in subsection (1) of this section at the rate of six percent from the date at which such additional taxes would have been payable if no special assessment were in effect.

Section 11. ORS 308.237 and 308.238 are repealed.

Section 12. The repeal of ORS 308.237 and 308.238 shall first apply to assessment and tax rolls for the fiscal year next following the effective date of the Act.55/

55/ Chapter 577, Oregon Laws of 1963.

The 1965 legislation attempted to deal only with the problems of establishing a valid criterion for judging farm use value. The act ultimately passed by the legislature follows:

CHAPTER 622 An ACT Relating to ad valorem taxation of farm land.

Be it Enacted by the people of the State of Oregon:

Section 1.

(1) Many farm properties throughout the State are being assessed for ad valorem purposes based upon market data information which does not represent the sale of comparable property for comparable uses and the particular sales which are utilized as indicators of the value of other farm properties, upon independent investigation, have been shown to represent sales for investment or other purposes not connected with bona fide farm use.

(2) Notwithstanding the provisions of ORS 308.205, agricultural lands, when devoted exclusively to farm use as defined in ORS 215.203, shall be valued upon the basis of such farm use (a) whether zoned as farm lands under existing statutes or (b) whether constituting unzoned farm lands under ORS 308.370, and when comparable sales figures are utilized in arriving at assessed values of agricultural lands, the county assessor and the State Tax Commission shall make sufficient investigation to ascertain that the sales so utilized in fact represent sales for bona fide farm use. The sales used, when examined under standard agricultural accounting procedures and standard agricultural practices in the county, shall justify their purchase by a prudent investor for farm use.

(3) This 1965 Act shall be liberally construed to effectuate its intended purposes; provided that, except as expressly set forth herein and to the extent necessary to carry out this Act, nothing contained herein shall be construed to alter or modify, by implication or otherwise, any of the existing provisions of title 29, Oregon Revised Statutes.

Approved by the Governor, June 3, 1965
Filed in the Office of Secretary of State, June 3, 1965.

Earlier versions of this bill contained a section establishing capitalized "Typical Net Rents" as the determinant of farm land value. Also included in the earlier version, but deleted from the final bill, was the establishment of a farmland appraisal advisory committee to assist the county assessor in determining farm-use value of land. The proposed, but deleted, provisions follow:

Section 2.

(4) "Net rent" means the amount remaining from gross income as a return to land after all expenses have been deducted. "Typical net rent" means that net rent which is typical of net rents for a particular class of land in a particular area.

Section 3.

(1) The method and procedures to be used under sections 1 to 8 of this Act for determining the farm use value of farm land shall involve consideration only of those factors (a) that relate to the capabilities of the land to produce net rent under conditions of use described in subsection (2) of section 2 of this Act, and (b) from which can be ascertained the typical net rent per acre based upon the crops normally grown in the area under generally accepted agricultural practices.

(2) The typical net rent per acre when capitalized at an appropriate rate determined annually by the State Tax Commission, is considered to be the farm use value of farm land. However, the rate of capitalization shall not be less than the lowest rate nor more than the highest rate currently used by the commission in valuing property under ORS 308.505 to 308.730.

Section 4.

(1) In order to assist the county assessor in determining the farm use value of farm land in accordance with the methods and procedures promulgated by the State Tax Commission there is established in each county in this state a farm land appraisal advisory committee.

(2) The farm land appraisal advisory committee consists of the county assessor, the Chairman of the county board of equalization who shall serve as chairman, and three residents of the county. The chairman of the county extension agents shall serve as an advisor to the committee but shall not vote thereon.

(3) The three residents of the county who serve as public members shall be appointed by the governing body of the county, with the advise of the two permanent members of the committee and the chairman of the county extension agents. These members must have been residents of the county for five years and must be well acquainted with agricultural practices in the county. At least one of the three must be an individual principally engaged in farming. Each public member shall be appointed for a term of three years, beginning with the assessment date. In the event of a vacancy among one of the three positions for public members, the governing body of the county shall appoint another resident of the county with the advice of the chairman of the county extension agencies and the assessor, to serve the remainder of the term vacated.

(4) Members of the farm land appraisal advisory committee may receive no compensation or reimbursement for their services as members.56/

* * * * *

Pennsylvania

Three preferential assessment bills have been introduced in Pennsylvania since 1964. Two of these bills called for constitutional amendments. They were not enacted. The third bill, which was passed and approved by the Governor in January 1966, provides for preferential assessment of farm, forest, and open space land as part of local land-use planning and contains a provision calling for the recapture of a part of the deferred taxes when the land changed use.57/ An accompanying measure, which did not pass, would have provided the State with the right and power to acquire open space property interest by purchase, condemnation, gift, or devise. Where a fee simple interest was acquired the State would have been given the right to resell the land subject to restrictive convenants for the purpose of preserving the open space area.58/

The two identical bills introduced in the 1964 and 1965 legislative sessions were never reported out of committee. Both bills provided that the Pennsylvania State Constitution be amended and the following section be inserted:

...The General Assembly may by general laws, provide for the taxation of land used for agricultural purposes on the basis of such use and when the use thereof is changed

56/ House Bill 1620, 53rd Legislative Assembly, Reg. Session.
57/ HB 1634, 1965 (became Act 515 when passed).
58/ HB 1633, 1965.

to a non-agricultural use may provide for the payment of additional charges in lieu of taxes for the period during which it was used for agricultural purposes. . .59/

The relevant portions of the act which was passed in 1966 follow:

SECTION 1. Definitions.--For the purpose of this act the following definitions shall apply:

(1) "Farm land." Any tract or tracts of land in common ownership of at least fifty acres in area, used for the raising of livestock or the growing of crops.

(2) "Forest land." Any tract or tracts of land in common ownership of at least twenty-five acres in area used for the growing of timber crops.

(3) "Water supply land." Any land used for the protection of watersheds and water supplies, including but not limited to land used for the prevention of floods and soil erosion, for the protection of water quality, and for replenishing surface and ground water supplies.

(4) "Open space land." Any land, including farm, forest and water supply land, the use of which does not exceed, but may be less than, an intensity of three percent site coverage including structures, roads, and paved areas. Open space land includes land the restriction on the use of which could (i) conserve natural or scenic resources, including but not limited to soils, beaches, streams, wetlands, or tidal marshes; (ii) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or other public open spaces; (iii) augment public recreation opportunities; (iv) preserve sites of historic, geologic, or botanic interest; or (v) promote orderly urban or suburban development.

(5) "Municipality." Any city, borough, town or township.

SECTION 2. Planning Requirements.--No land shall be subject to the provisions of this act unless designated as farm, forest, water supply, or open space land in a plan adopted following a public hearing by the planning commission of the municipality, county or regions in which the land is located and unless it is within an area of concentrated population defined by the Federal government as an urban area.

SECTION 3. Covenant for Farm, Forest, Water Supply or Open Space Uses.--All counties of the first, second, third or

59/ HB 157, 1964; HB 237, 1965.

fourth class are hereby authorized to enter into covenants with owners of land designated as farm, forest water supply, or open space land on an adopted municipal, county or regional plan for the purpose of preserving the land in the designated use. Such covenants and extentions thereof shall take effect upon approval of the court of quarter sessions of the county in which such land or the major part thereof lies. The land owner may voluntarily covenant for himself and his successors and assigns in right, title and interest that the land will remain in open space use as designated on the plan for a period of five years commencing with the date of the covenant. The county shall convenant that the real property tax assessment, for a period of five years commencing with the date of the covenant, will reflect the fair market value of the land as restricted by the covenant.

SECTION 4. Renewal and Termination of Covenant.--Each year on the anniversary date of entering the covenant, it shall be extended for one year unless:

(1) At least thirty days prior to any anniversary date of entering the covenant the land owner notifies the county that he wishes to terminate the covenant at the expiration of five years from the anniversary date, or

(2) At least thirty days prior to an anniversary date of entering the covenant the county notifies the land owner that it wishes to terminate the covenant at the expiration of five years from the anniversary date, on the sole ground that the plan designating the land as farm, forest, water supply, or open space land has been amended officially so that the designation is no longer in accord with the plan.

Notification of the desire to terminate the covenant shall be by registered mail.

SECTION 5. County Procedures.--The county governments shall establish procedures governing covenants between land owners and counties for preservation of land in the uses covered by this act.

SECTION 6. Breach of Covenant by Land Owner.--If the land owner, his successors or assigns, while the covenant is in effect, alters the use of the land to any use other than that designated in the covenant, such alteration shall constitute a breach of the covenant and the land owner at the time of said breach, shall pay to the county, as liquidated damages, the difference between the real property taxes

paid and the taxes which would have been payable absent the covenant, plus compound interest at the rate of five percent per year from the date of entering the covenant to the date of its breach or from a date five years prior to the date of its breach whichever period is shorter. Such liquidated damages shall be a lien upon the property collectible in the manner provided by law for the collection of unpaid real property taxes. The acquisition by lease, purchase or eminent domain, and use of rights of way or underground storage rights in such land by a public utility or other body entitled to exercise the power of eminent domain shall not constitute an alteration of use or a breach of covenant.

* * * * *

SECTION 8. Effective Date.--This act shall take effect immediately.

Rhode Island

The 1963 session of the Rhode Island Legislature had before it a measure intended to amend the property tax laws of the State to allow preferential assessment. The measure failed to pass. The bill would have amended two sections of the State property tax laws to read as follows:

44-5-12. Assessment at full and fair cash value.
All property liable to taxation shall be assessed at its full and fair cash value; provided however, that in assessing real estate which is used exclusively for the purpose of growing or producing farm products as defined in section 43-3-18 and which has been so used for at least two (2) successive years immediately preceding the date of assessment, the assessors shall consider no factors in determining the full and fair cash value of all real estate other than those which relate to said use.

44-5-20
The assessors shall make a list containing the true, full and fair cash value of all the ratable estate in the town, placing land, buildings and other personal property, in separate columns, distinguishing real estate which is assessed specially in accordance with the proviso in Section 44-5-12, and also distinguishing those assessed who give in an account from those who do not and shall apportion the tax accordingly.

Texas

The 1965 Texas Legislature passed a preferential assessment measure and the voters approved it by a 3 to 2 margin at the November 1966 general election. This measure both amends the constitution to allow preferential assessment and incorporates into the State constitution the provisions of a preferential assessment law.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. That Article VII constitution of the State of Texas be amended by adding Section 1-d to read as follows:

Section 1 (d)

(a) All land owned by natural persons which is designated for agricultural use in accordance with the provisions of this Section shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use. 'Agricultural Use' means the raising of livestock, or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit which business is the primary occupation and source of income of the owner.
(b) For each assessment year the owner wishes to qualify his land under provisions of this Section as designated for agricultural use he shall file with the local tax assessor a sworn statement in writing describing the use to which the land is devoted.
(c) Upon receipt of the sworn statement in writing the local tax assessor shall determine whether or not such land qualifies for the designation as to agricultural use as defined herein and in the event it so qualifies shall designate such land as being for agricultural use and assess the land accordingly.
(d) Such local tax assessor may inspect the land and require such evidence of use and source of income as may be necessary or useful in determining whether or not the agricultural use provision of this article applies.
(e) No land may qualify for the designation provided for in this Act unless for at least three (3) successive years immediately preceding the assessment date the land has been devoted exclusively for agricultural use or unless the land has been continuously developed for agricultural use during such time.
(f) Each year during which the land is designated for agricultural use the local tax assessor shall note on his records the valuation which would have been made had the land not qualified for such designation under this section. If designated land is subsequently diverted to a purpose other than that of agricultural use, or is sold, the land

> shall be subject to an additional tax. The additional tax shall equal the difference between taxes paid or payable hereunder, and the amount of tax payable for the preceding three years had the land been otherwise assessed. Until paid there shall be a lien for additional taxes and interest on land assessed under the provisions of this section.
> (g) The valuation and assessment of any minerals or subsurface rights to minerals shall not come within the provisions of this section. 60/

Virginia

A resolution introduced during the 1962 session of the Virginia House of Delegates would have amended the State constitution to permit the assessment of land actively devoted to farm or agricultural use on the basis of its farm-use value alone. This resolution failed to pass.

The amendent proposed to strike a section of the State constitution and insert the following section. The underlined portion was the only change actually to be made.

> 169. Except as hereafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law; but the General Assembly may provide by law that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed on any other basis.

Washington

Three resolutions dealing with preferential assessment have been introduced in the Washington State Legislature. Two of these measures were directed toward amending the State constitution to allow the preferential assessment of farm land; the other was an attempt to amend the property tax laws. None of these measures passed.

Senate Joint Resolution No. 18, introduced in the 1959 session of the State legislature, attempted to amend the State constitution so that it would read in part: "Provided further, that lands which are actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed on any other basis."

In 1963, House Bill 587 was introduced, but failed to pass. This act would have allowed preferential assessment of land zoned agricultural. The complete bill follows:

60/ House Joint Resolution 79, Laws 1965.

An Act Relating to the assessment of agricultural property for tax purposes; setting forth powers and duties of county commissioners and tax assessors in respect thereto.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The board of county commissioners of any county in the state is authorized and empowered, in accordance with the provisions pertinent thereto in chapter 36.70 RCW, in its discretion to zone areas in the county exclusively used for agricultural purposes as "agricultural lands": PROVIDED, That "agricultural purposes" shall include only lands being used in a bona fide farming, pasture, or grove operation by the lessee or owner, or some person in his employ.

NEW SECTION. Section 2. In the event that the board of county commissioners zones any lands "agricultural lands" as provided in section 1 of this act, the board shall notify the tax assessor on or before November 1st in each year and the tax assessor shall, on January 2nd of the succeeding year or as soon thereafter as is practicable prepare and certify to the board of county commissioners a list of lands in the county zoned as agricultural lands.

NEW SECTION. Section 3. Land which is zoned exclusively for agricultural purposes shall be assessed as agricultural land and not at the true cash value such land would have if used for other than agricultural purposes. The tax assessor in assessing land within this class shall take into consideration the following use factors: (1) the cost of the property as agricultural land; (2) the present replacement value of improvements thereon; (3) quantity and size of the property; (4) the condition of said property; (5) the present cash value of said property as agricultural land; (6) the location of said property; (7) the character of the area or place in which said property is located; and (8) such other agricultural factors as may from time to time become applicable.

The most recent attempt to amend the State constitution to allow preferential assessment was a section included in a 1965 proposal for a constitutional amendment providing for a number of tax reforms. That section read:

> ...Provided further, "That nothing in Article VII as amended shall prevent the legislature from providing under such conditions as it may prescribe that the true and fair value in money of farms and agricultural lands shall be based on the use to which such property is currently applied and such value shall be used in computing the assessed valuation of such property in the same manner as the assessed valuation is computed for all property...61/

The legislature did not accept this proposal.

61/ SJR No. 24, 1965.

Wisconsin

In 1963, a constitutional amendment62/ was introduced in the Wisconsin Legislature. The amendment provided that "taxation of agricultural land as defined by the Legislature in cities and villages need not be uniform with the taxation of other real property."

This measure was approved by both the House and the Senate. Under Wisconsin law, however, all constitutional amendments must be approved by two consecutive legislatures before they are sent to the voters. The 1965 legislature failed to act upon the measure, and it died.

A bill which was not acted upon during 1963 attempted to add to the State tax laws an additional class of real property termed "urban agricultural":

> Urban agricultural land as used in sub (2) is an area comprising a farm which is actively operated for production of any agricultural, horticultural, viticultural, vegetable, poultry, livestock products including dairying, bees and honey, timber and wood products for market, and is deemed to have a prospective enhanced value by reason of its proximity to cities, villages, or other economic uses when and if converted to other than agricultural use. In assessing property classed as urban agricultural such value shall not be deemed to include prospective value for such other than agricultural use.63/

62/ Senate Joint Resolution 68, 1963; Senate Joint Resolution 19, 1965.
63/ No. 162 S 1963.

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